

**NO COPY OF THIS TRANSCRIPT MAY BE MADE PRIOR TO 2/11/2019

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

KURT CARPENTINO

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17-cr-157-01-PB

June 7, 2018

9:00 a.m.

DAY 2 - MORNING SESSION
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE PAUL J. BARBADORO
AND A JURY

Appearances:

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Georgiana L. Konesky, AUSA
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P R O C E E D I N G S

THE CLERK: In the matter of United States of America versus Kurt Carpentino, 17-CR-157-01-PB, the plaintiff has premarked exhibits 1 through 22. The following exhibits not marked for identification are herewith accepted into evidence, there being no objection by opposing counsel. 10 through 10b, 11a, 11c, 11e, 22, 12 and 15. Those exhibits to which objection has been made shall remain marked for identification.

Defendant has premarked exhibits A through S. The following exhibits not marked for identification are herewith accepted into evidence, there being no objection by opposing counsel. A through B, D through L -- I'm sorry. Those exhibits to which objection has been made shall remain marked for identification, C, M, M-1, M-2, O, O-1.

THE CLERK: Court is in session and has for consideration a jury trial in United States of America versus Kurt Carpentino, Criminal Case No. 17-cr-157-01-PB.

THE COURT: All right. I have two matters I want to discuss with the parties before we bring the jury in.

First, as you know, I issued an oral ruling on

1 the defendant's motions to suppress following the
2 evidentiary hearing I held on those motions. Following
3 the hearing I continued to have concerns as to whether I
4 had fully understood the argument that the defendant was
5 pressing in support of his effort to suppress the fruits
6 of his second interview at the state police barracks. I
7 held a telephone conference with the parties and
8 following that conference I believe I had clarity as to
9 what specific arguments the defendant was pressing with
10 respect to that interview. I directed the parties to
11 file supplemental briefs on it. They did. I have
12 reviewed those briefs. I spent yesterday drafting a
13 memorandum and order responding to the issues raised in
14 those briefs and I have determined that I am going to
15 deny the motion to suppress substantially for the
16 reasons I specified at the end of the hearing, but I
17 wanted to provide a more detailed written explanation of
18 why the suppression motions fail insofar as they are
19 directed at the second statement the defendant gave at
20 the state police barracks.

21 My rulings stand to the extent I made findings
22 of fact following the hearing on the motions to
23 suppress. My rulings stand with respect to all other
24 issues raised in the motions to suppress that I resolved
25 orally. I felt no need to further examine those issues

1 in my written order. And I want the written order to
2 supplement my oral ruling insofar as it applies to the
3 defendant's second statement at the police barracks.
4 That order is being cite checked now and it will issue
5 either tomorrow or Monday, but the parties should know
6 that I have denied the motions to suppress after
7 receiving the supplemental briefing.

8 Does anybody want me to say anything else with
9 respect to the rulings on the motions to suppress?

10 MR. SAXE: No, your Honor.

11 MR. AFRAME: No.

12 THE COURT: Second, last night I received a
13 telephone call, or the clerk's office received a phone
14 call from the defendant who asked to speak to me. We
15 arranged a telephone call with counsel for both sides.
16 At that call the defense counsel noted that when they
17 reviewed the material produced pursuant to the Attorney
18 General's subpoena, they saw references in those
19 materials suggesting that the alleged victim in the case
20 may have made false statements on other matters either
21 to the Hinsdale police or in connection with her
22 attendance at the school that she attended. The
23 defendant sought additional subpoenas and information
24 with respect to those alleged false statements. I
25 instructed the government to contact the Hinsdale Police

1 Department and attempt to obtain any records that the
2 department has concerning any alleged false statements.
3 And I also approved the defendant's request for the --
4 for a subpoena to the school directing the production of
5 any records the school has about those false statements.
6 I'd like a status report.

7 MR. AFRAME: The government obtained the
8 records from the Hinsdale Police Department and turned
9 them over to the defendant.

10 THE COURT: All right, you received those
11 records?

12 MR. SAXE: We did this morning, we reviewed
13 them, your Honor.

14 THE COURT: And what's the status of your
15 subpoena, were you able to get it served?

16 MS. GRAHAM: Yes, your Honor, we were able to
17 have it served last night. We were in communication
18 with the school principal. They were undergoing a
19 review based on that subpoena. And I provided them with
20 Clerk Negron's email address and told them to direct any
21 communications specifically to him, because one of their
22 questions was if we don't find anything what do we do,
23 and since I know I'm going to be here I directed it to
24 the clerk.

25 THE COURT: All right. It seems to me that if

1 there is information that pertains to the issues raised
2 in the subpoena, the information is potentially useful,
3 if at all, under Rule 608(b) in cross-examination of the
4 alleged victim. In other words, that rule allows for a
5 person cross-examining a witness to inquire of the
6 witness of matters that pertain to the witness's
7 credibility, including that they made false statements
8 in the past on other matters. The rule generally
9 disallows extrinsic evidence of those alleged false
10 statements. So to insure that the defendant has an
11 adequate opportunity to cross-examine the alleged victim
12 about any false statements, they're going to need to
13 have those records in hand at some point prior to the
14 cross-examination of the victim.

15 What's your plan with respect to calling her
16 as a witness?

17 MR. AFRAME: At this point she is the fourth
18 or fifth witness. I mean, our hope was to do it today,
19 but we understand the situation we're in as well.

20 THE COURT: Well, one of the things we could
21 do is go through and if we run out of other witnesses,
22 you can do your direct. Hopefully by the end of today
23 we'll have any records and we can just postpone the
24 cross until tomorrow.

25 MR. AFRAME: We're also prepared with other

1 witnesses, so hopefully we can -- but you're right,
2 that's a possibility.

3 THE COURT: All right, well, let's play it by
4 ear as to what we're going to do.

5 THE CLERK: I just received an email from the
6 principal.

7 THE COURT: What did the email say?

8 THE CLERK: It says these are some notes
9 written by M. Harvey and the only documents Terry has
10 based on her search through the SPED eval files,
11 counseling files and emails, both paper and electronic,
12 and she's attached those notes.

13 THE COURT: All right, I will review those
14 notes in camera, determine what if any portions of the
15 notes may be made available for inspection. I will
16 treat those notes in the same way that I treated the
17 materials produced by the Attorney General. To the
18 extent that they may produce information that could be
19 helpful to the defense, I'll order them to be made
20 available for inspection by the parties. They can again
21 take notes on them but not make copies of the documents,
22 and assuming that takes place at the lunch hour, then I
23 don't see any reason why the defendant can't be able to
24 cross-examine the alleged victim and we can proceed as
25 scheduled. Does the defense disagree?

1 MS. GRAHAM: No, your Honor.

2 THE COURT: Okay.

3 MR. AFRAME: Just one clarifi -- point on
4 that. So under the rule we are supposed to notify the
5 victim. We have done that. The victim does not want to
6 interpose any objection, and that was through her father
7 obviously.

8 THE COURT: Okay. All right. Thank you for
9 reminding me of that. That's important because under
10 the rule the victim does have a right to object.

11 All right, those are the only matters I need
12 to address with the parties before we begin with opening
13 statements. Is there anything else that anyone needs to
14 raise with me?

15 Ms. Graham: No.

16 MR. AFRAME: No.

17 THE COURT: Okay, bring the jury in.

18 BEFORE THE JURY

19 THE COURT: Jury please remain standing,
20 everybody else be seated, and you with can swear the
21 jury in.

22 THE CLERK: Would you all raise your right
23 hand.

24 (Jury duly sworn.)

25 THE COURT: All right, good morning, members

1 of the jury. We're about to get started. I want to
2 give you some general instructions that I'd like you to
3 follow throughout the case. Let me begin by reiterating
4 a few things that I told you when you were selected.

5 You have to base your verdict in this case
6 solely on what happens here in the courtroom. So, you
7 have received no information about this case at this
8 point. I've explained to you that the defendant, as all
9 defendants in criminal cases have, has a right to be
10 presumed innocent and to remain innocent until and
11 unless the government proves the defendant's guilt
12 beyond a reasonable doubt. So, we start with a clean
13 slate with no evidence. And so you can't even begin to
14 make up your mind at this point. And I want to ask you
15 to the extent you can possibly do it to keep an open
16 mind throughout the case. You can't really decide
17 whether someone is guilty or not guilty until you've
18 heard all the evidence in the case. So if you try to
19 make up your mind too soon before you've heard
20 everything you might be prone to making a mistake. So
21 please keep an open mind as the evidence in the case is
22 presented to you and don't attempt to draw any
23 conclusions about the case until you've heard all the
24 evidence.

25 Also you should, you don't really know what

1 the law is that applies to this case yet, and I will
2 tell you everything you need to know about the law at
3 the end of the case. So until you know what the legal
4 standards are that you'll have to apply, you really
5 can't make any decisions about somebody's guilt or
6 innocence. So, you have to wait until I give you the
7 legal instructions.

8 The parties will have a chance to make closing
9 arguments at the end of the case and you need to be open
10 to hearing their arguments about what they -- how they
11 assess the evidence. And it's important that you keep
12 an open mind until you've heard what other people on the
13 jury have to say. So, please keep an open mind
14 throughout the case.

15 I've told you that you can't go out and do any
16 investigation about this matter and that you should not
17 expose yourself to any discussions of the case in the
18 media or in the newspapers or to acquire any information
19 about this case while you're sitting on the jury. If by
20 chance you should end up being exposed to something
21 about the case outside of the courtroom, you should let
22 the clerk know and they'll bring it to my attention and
23 I'll determine what if anything needs to be done, but I
24 want you to make a real effort not to expose yourself to
25 any discussions about this case that may occur in the

1 media. I don't want you to talk about the case with
2 anyone else, and even with other people on the jury.
3 Until you begin your jury deliberations I don't want you
4 to be discussing the substance of the case because jury
5 deliberation should occur after all of the evidence is
6 in and everybody on the jury should hear what other
7 jurors were saying.

8 You can talk about little things, if something
9 funny happens in court or things like that, but don't
10 talk about the substance of the case or attempt to
11 deliberate until you've heard all the evidence and I
12 instruct you that you can begin your deliberations.

13 Don't engage in any social media about the
14 case until the case is over. When it's over you can do
15 whatever you want. But until then I'm instructing you
16 not to engage in any social media concerning your work
17 as a juror in this case.

18 And don't go out and do any investigation on
19 the internet about issues that are talked about at the
20 trial or about what you think a jury should be doing. I
21 explained to you a problem I had in a case a few years
22 ago and I don't want to see that problem repeated.

23 You have notebooks. Let me tell you about how
24 to use those notebooks. You may take notes if you
25 choose to do so, but you are not in any way obligated to

1 take notes. Your primary job here is to listen to the
2 witnesses. To watch them testify. To look at the
3 exhibits. And to take in what is happening in front of
4 you, the evidence that is being presented. So I don't
5 want you to be so busy taking notes that you're not able
6 to focus on what's happening in the courtroom. So if
7 you choose to take notes, don't let it distract you from
8 what your primary mission is here.

9 I should tell you that you are not to show
10 your notes to anyone else on the jury or read from your
11 notes to anyone else on the jury. If you take notes,
12 they're to be used solely to help you refresh your own
13 memory as to something that happened. You can't use it
14 to try to persuade another juror. And even if you wrote
15 something down, you should be open to hearing what other
16 jurors remember because you might not have written it
17 down correctly. And what I found over the years and why
18 I have so much faith in you and your ability to do this
19 job is that there are a large group of you who are
20 listening to the evidence, and collectively I find that
21 jurors don't miss very much. But you have to be willing
22 to listen to what other people remember happened and not
23 simply take what you've written down verbatim in your
24 notes as the absolute truth and you're not willing to
25 hear any other argument about it. Of course you have to

1 make up your own mind as to what the evidence actually
2 was at the end of the day.

3 Your notebooks will be collected at the end of
4 each day and placed in an envelope. No one will ever
5 look at what's in your notebooks. At the end of the
6 trial the notebooks will be collected and the notes
7 you've taken will be destroyed. So they won't be shown
8 to anybody and you won't be able to keep them when you
9 leave. So take notes if you choose, don't feel
10 obligated to take notes, don't let note taking distract
11 you from your job as a juror, don't show the notes to
12 anybody or read to them -- read from them to anybody
13 else on the jury. Okay?

14 So, here's the way the trial is going to
15 unfold. We're going to start with opening statements.
16 The prosecutors will make their opening statement and
17 then the defendant will make an opening statement if the
18 defendant chooses to do so. What the lawyers say to you
19 in their opening statements, during their closing
20 arguments and indeed anything that comes out of their
21 mouths during the trial, none of that is evidence, all
22 right. The evidence is the testimony that the witnesses
23 provide, the exhibits that are admitted into evidence,
24 and any inferences you draw from that evidence using
25 your daily experience and commonsense. Any stipulations

1 that the parties agree to, and I will instruct you if
2 they do make a stipulation, that it is a stipulation,
3 can also be considered by you. But what the lawyers say
4 is not evidence. You can't consider it as evidence.
5 It's designed to help you understand the evidence, and
6 so you can consider it in that way, but it is not
7 evidence. So if they say something and the evidence
8 doesn't support what they're saying, you can't accept
9 their position on it simply because they say it's so.
10 You have to decide what the evidence in the case is, not
11 the lawyers. Okay?

12 But they'll have their opening statements and
13 then we'll start hearing witnesses. And the prosecutor
14 has the burden of proof, so they will call witnesses
15 first, one at a time, and ask what's called direct
16 examination questions. They'll ask their questions.
17 When they're done, I'll allow cross-examination from the
18 defendant. When the defendant's done, I'll allow a
19 brief redirect questioning by the prosecutor. That in
20 the ordinary case will be the end of it. I don't
21 usually allow recross-examination unless there's
22 something unusual that happens. And we'll go through
23 each of the prosecutor's witnesses until we're done with
24 all of the prosecutor's evidence.

25 At the end of that, the prosecutor's case, the

1 defendant will have an opportunity to call any
2 witnesses. The defendant will have an opportunity to
3 testify. But remember, the burden is always on the
4 prosecutor, not the defendant. The defendant doesn't
5 have to call any witnesses. Doesn't have to ask any
6 questions. The defendant has no obligation to testify.
7 And you cannot infer anything from the fact that he
8 doesn't testify if he chooses not to testify. The
9 defendant has no burden to do anything. The burden is
10 on the government to do anything.

11 If the defendant elects to put on evidence, it
12 will proceed in the same way that the prosecutor has
13 proceeded. The defendant will call witnesses one at a
14 time and ask direct questions, the prosecutor will be
15 allowed to have cross-examination, I'll allow the
16 defendant to have redirect, and that will be the end of
17 it.

18 Generally once we finish with all of the
19 defense witnesses, that will be the end of the evidence,
20 then we will have closing arguments and I'll instruct
21 you on the law, and then you'll be free to begin your
22 deliberations.

23 We'll proceed in court generally from 9:00
24 till about 4, sometimes we may go to as late as 4:30
25 depending upon what's happening in the case. I won't go

1 beyond 4:30 without consulting with you about
2 commitments that you may have made. We'll take a break
3 in the middle of the day for about an hour to an hour
4 and a half, and we'll take breaks in the middle of the
5 morning and the middle of the afternoon for about
6 15 minutes.

7 If you need a break at some point where I
8 haven't scheduled one, raise your hand and I'll ask you
9 do you need a break, and I will always respect your need
10 for a break.

11 If you have a back problem and you need to
12 stand or stretch or something, that's fine during the
13 course of the trial.

14 You can't speak out during the trial, so if
15 there's something that you think -- sometimes, for
16 example, everybody thinks you're seeing an exhibit on
17 your monitor and you're not, just raise your hand and
18 I'll figure out what's going on, okay. If I ask you
19 something, you can answer, but don't otherwise speak
20 out.

21 Sometimes witnesses will be shown documents
22 that you will not see. Until a document is admitted
23 into evidence, you wouldn't be shown it. So, sometimes
24 we'll have documents on the screen that the witness can
25 see, the lawyers can see, and I can see, but you can't.

1 If they're admitted into evidence then they will be
2 depicted on your monitor when the lawyer is questioning
3 a witness about them.

4 Those are my general instructions. Are we
5 ready to begin with opening statements?

6 MR. AFRAME: Can I just have 20 seconds of the
7 Court's time?

8 THE COURT: Yes.

9 MR. AFRAME: One question.

10 AT SIDEBAR

11 MR. AFRAME: Just in light of the comments you
12 just made, in my opening I was going to mention what I
13 thought the elements are. Do you not want me to do
14 that?

15 THE COURT: No, I have no trouble. Some
16 judges apparently do?

17 MR. AFRAME: They do.

18 THE COURT: It was a standard part of my
19 belief as to how I opened and closed every homicide case
20 I was involved with as long as it is clear, and I think
21 I've made it clear, that the law comes from me, not from
22 the lawyers, and you do so at your risk if you identify
23 something as different from what I ultimately instruct
24 on, but I have no problem with either of you referring
25 to what you expect the judge will tell you about the

1 law.

2 MR. AFRAME: Okay, thank you. I'm ready.

3 BEFORE THE JURY

4 THE COURT: All right, we're ready with
5 opening statements. The government can proceed.

6 MR. AFRAME: Good morning, members of the
7 jury.

8 This case is a case about manipulation. The
9 manipulation of the then 33-year-old defendant Kurt
10 Carpentino of a 14-year-old girl, Mackenzie Harvey. It
11 was manipulation for sex. And that manipulation
12 resulted in the defendant taking Mackenzie Harvey from
13 her home in Hinsdale, New Hampshire, to an abandoned
14 motel room in Rockingham, Vermont, on April 27th where
15 they had sexual intercourse.

16 Now, in every criminal case, for you to
17 convict someone you have to decide beyond a reasonable
18 doubt certain facts, certain important facts that in the
19 law we call elements. And at the end of the case as
20 Judge Barbadoro has already told you, he's going to
21 describe to you the elements of the case. But I think
22 it's helpful for you to have at least some understanding
23 as to what I think those elements are going to be so
24 that you are listening to those things that are most
25 important.

1 So the crime here is that the defendant
2 knowingly transported in interstate commerce, which
3 means across state lines, a person who's under 18 years
4 of age with the intent to have sex in a way that
5 violates the law. Those are the elements of this
6 offense as I understand them to be.

7 So what are you going to learn factually that
8 matches up to those elements over the next couple of
9 days? You're going to learn that on April 27, 2017, in
10 the wee hours of the morning the defendant went to the
11 window of Mackenzie Harvey's home at 76 Glen Street,
12 threw a rock at the window, helped her down, walked up
13 to the old train tracks to where his car was and they
14 drove to this abandoned motel in Rockingham, Vermont,
15 having left New Hampshire, a property that is owned by
16 the defendant's family, and there that night Mackenzie
17 Harvey and the defendant had sexual intercourse. Those
18 facts I submit to you at end of the case will prove the
19 elements of the offense.

20 Now, how are you going to learn this, because
21 as the judge told you, my telling you doesn't do a
22 thing. How are you going to learn it? Well, you're
23 going to learn it from witnesses. And one of the
24 witnesses you're going to hear is Mackenzie Harvey. And
25 she's going to tell you some of the background of this

1 situation.

2 Late in the summer of 2016 Kurt Carpentino was
3 the landlord of the house where Mackenzie Harvey was
4 living with her mother, and her mother had a friendship
5 with Kurt Carpentino, and starting some time in August,
6 late August, early September Kurt Carpentino started to
7 stay in the semi-finished attic in that house at 76 Glen
8 Street.

9 And you're going to hear a little bit from
10 Mackenzie Harvey about her life. It was not an easy
11 life. She suffered from a hearing disability. She
12 suffered from ADD and ADHD, depression, anxiety. You
13 will hear there was arguing in her home. You will just
14 hear it was tough to be 14-year-old Mackenzie Harvey
15 living at 76 Glen Street in New Hampshire. And you'll
16 hear that once the defendant moved into that home, he
17 started to show her attention. He bought some things
18 for the family. He was nice to her.

19 But you'll hear that that relationship changed
20 one night in the fall of 2017, some time around
21 Halloween. You'll hear that Kurt Carpentino joined
22 Mackenzie Harvey's family on a hayride that night. And
23 somewhere on that hayride Mackenzie became scared and
24 she grabbed on to Kurt Carpentino. And later that night
25 Mackenzie Harvey ended up in that semi-finished attic

1 with Kurt Carpentino and for the first time they had
2 sexual intercourse.

3 And you'll hear that over the next several
4 months there were multiple sexual encounters between
5 Mackenzie Harvey and Kurt Carpentino. You will see a
6 letter that Kurt Carpentino wrote to Mackenzie Harvey in
7 the midst of their relationship. And you will see that
8 he told her in that letter to deny that they were having
9 sex, that he loved her, and suggested that they run away
10 together.

11 You'll see a text exchange between Kurt
12 Carpentino and Mackenzie Harvey the day before the
13 events that make up the crime that you're asked to
14 consider here, and you'll see again confirmation of the
15 nature of this relationship.

16 And finally you will see on a telephone that
17 was found in Kurt Carpentino's glove box, a phone that
18 is registered to him, a sexually explicit photograph of
19 Mackenzie Harvey that she will tell you she sent to him.

20 It was a sexual relationship from November to
21 the end of April, and then we have the events of April
22 27. And Mackenzie will tell you that by that point she
23 knew he was coming for her. She had packed some things.
24 They were in her backpack. He came to the window. He
25 threw the rock. She climbed down. You'll hear that

1 they walked up those old train tracks to his car and
2 they drove into Vermont and that's where he had sex with
3 her.

4 How did that happen? They arrived at the
5 abandoned motel. The defendant put out a tarp. You'll
6 see pictures of this motel. It is not a Ritz Carlton.
7 He put out a tarp on the floor and that's where they had
8 sexual intercourse.

9 The next morning people at 76 Glen Street
10 realized Mackenzie wasn't there and they sent out a
11 search party from Hinsdale over to Rockingham because
12 they had some idea that this was a possibility because
13 of the knowledge that Mr. Carpentino had an association
14 with this property. And you will hear from a person
15 named Patrick Elmore. He'll be the first witness in
16 this case. And he was the leader of a youth church
17 group and knew Mackenzie through that context. And he
18 will describe to you how he was part of that search
19 party and he saw her in the woods and eventually she
20 came out of those woods to the search party. Kurt
21 Carpentino meanwhile was found just a couple miles away
22 by the police in his 2004 silver Dodge Neon.

23 You'll hear what Kurt Carpentino said to the
24 police at the side of the road, and then you'll hear
25 that after Mackenzie was found, he was arrested and he

1 went to the Vermont State Police Barracks, and later
2 that day he gave a full recorded confession of this
3 crime. You will hear Kurt Carpentino's full recorded
4 confession. Is it exactly the same as Mackenzie's down
5 to every single detail? No. And I would suggest to you
6 you shouldn't think that it would be. But the essence
7 of it is the same. Sex in November in the attic, went
8 to the motel in April, had sex again.

9 Now, about ten days later after that, Kurt
10 Carpentino was detained in a jail in Vermont and he
11 wrote some letters to a lawyer that he employed for
12 matters unrelated to this case. And he asked the lawyer
13 to forward those to a friend of Mackenzie whose name is
14 Jasmine. And the point of those letters was to get
15 Jasmine to give them to Mackenzie. Jasmine didn't do
16 that. Those letters ended up with the police. You will
17 see those letters.

18 In those letters Kurt Carpentino told
19 Mackenzie Harvey to lie. Told her what to say. Told
20 her how to try to explain away everything that had
21 happened. And he told her to do it for him because if
22 she loved him, she would save him from having to go to
23 jail.

24 Ladies and gentlemen, from the beginning to
25 the end it was manipulation. You will hear about a sad

1 14-year-old girl who received promises of love and
2 affection from a 33-year-old man. He did it for sex,
3 and then hid it to try to save himself when he got
4 caught. It was manipulation, pure and simple.

5 That's what I expect the evidence will show
6 you. After you hear that evidence my colleague Georgie
7 Konesky will come back to you and explain to you why
8 that evidence should result in you finding the defendant
9 guilty of the crime with which he is charged. Thank you
10 very much.

11 THE COURT: Thank you. Does the defendant
12 wish to make a statement?

13 MR. SAXE: Yes, your Honor.

14 THE COURT: Go ahead.

15 MR. SAXE: Thank you. Good morning. My name
16 is Jonathan Saxe. I'm an attorney. I work for the
17 Federal Defenders Office in New Hampshire. Dorothy
18 Graham is my colleague. She's the other attorney on the
19 case. And we have two assistants, Brooke Cassidy and
20 Chase McNiss who are going to help us. Most
21 importantly, Kurt Carpentino is our client. Thank you.

22 Kurt is 34 years old right now. At the time
23 that this, these allegations were made, he was 33 years
24 old. He's from Hinsdale, New Hampshire. He was born
25 and raised there. He has a 14-year-old son who lives

1 with his mother. His father died in 2006 and his mother
2 Karen Conway died I think in 2012.

3 Now, at the time she died she owned a number
4 of properties. There was two properties in Vermont.
5 The first property was referenced to by the government.
6 It's this abandoned hotel. And then there was another
7 property, and that was owned by his sister, okay, that
8 was left to his sister. And his mother left him two
9 properties in Hinsdale and another property in Vermont.
10 And he had rented the property in Vermont to an
11 individual named Tim Olmstead and he rented the two
12 properties in Hinsdale, one to a woman named Tabatha
13 McQuestion or Donoghue, and another, the property in
14 question here, is 76 Glen Street, and that property was
15 rented to Carol Pino, and Carol Pino is Mackenzie's
16 mother, but there were a lot of other people living
17 there as well.

18 Frank Brown was her boyfriend at the time. He
19 leaved with her. They were in the same bedroom.
20 Mackenzie had a bedroom. Then there was a younger son
21 of Carol's named David and then there was an older son
22 named Mike Pino who lived there with his wife Kaitlyne
23 and they had two children, and then at some point there
24 was an individual who was a friend of Mike's who was
25 having some trouble so he also lived there in the attic,

1 all right?

2 And, so, Kurt has a job. He worked as a,
3 didn't get paid a lot of money, he worked at a linen
4 service in Keene, New Hampshire, and so he relied on the
5 income from these properties because he didn't make a
6 lot of money. There was a mortgage on one of the
7 properties and that was the property that he rented to
8 Tabatha. That was the second property in Hinsdale.
9 There was no mortgages on the property that he rented to
10 Carol Pino and there was no mortgage on the property
11 that he rented to Tim Olmstead in Vermont.

12 He fell behind in taxes. He did not live at
13 the residence on 76 Glen Street in Hinsdale. He had an
14 apartment in Manchester. But because he was the
15 landlord he would go to the property, he'd fix it. And
16 you'll see a picture at this time the house was being
17 painted. It's kind of a rundown house. He would go
18 over there on a regular basis to fix things, work on
19 things, and then he became friendly with Carol. And so
20 he came over also socially as well, but he did not live
21 there. He lived in an apartment in Manchester.

22 Now, this seemed to be working fine. Then at
23 some point both Carol and Tabatha fell on hard times for
24 some reason and they stopped paying rent. So, this put
25 him in a bind because he didn't have very much money.

1 They didn't pay rent in January and they didn't pay rent
2 in February and they didn't pay rent in March. And yet
3 he maintained, he's a kind of soft-spoken guy, he
4 maintained good relations with them anyway, kept telling
5 them, you know, this can't go on, you're three months
6 behind in your rent. So finally he served them with an
7 eviction notice, and this was in April, I believe it was
8 April 20, 2017.

9 These allegations came about shortly after
10 that happened, all right, and so the government has made
11 some assertions and allegations. The defendant did not
12 have sex with Mackenzie Harvey in the attic at 76 Glen
13 Street. He never had sex with her on any other
14 occasion. And he did not transfer her to Vermont on the
15 27th and have sex with her at that motel.

16 This is a case that involves false allegations
17 and a rush to judgment. You'll hear evidence that when
18 the defendant was arrested, the first thing that the
19 Springfield officer did was say where's the girl. He
20 pulled over the defendant in Springfield and there was
21 no girl in the car. There was no Mackenzie in the car.
22 And he said what girl. He wasn't nervous. If somebody
23 had actually done this stuff, they would be nervous. He
24 wasn't nervous at all. He said what girl, all right.
25 There was no girl in the car. They searched the car

1 like there might be some other evidence that there was a
2 girl there. There was no evidence that the girl had
3 been in the car. They searched the trunk. There was no
4 evidence that there was a girl in the trunk.

5 Why was he up there? Because, two reasons.
6 He has a property that he rents to Tim Olmstead. They
7 were actually in discussions about Tim Olmstead buying
8 the property, and because that apartment or it's a
9 rundown motel, you'll see, it's really run down, there's
10 no doors on it and people go up there and they do like
11 drugs in there or they -- so he goes up and he checks on
12 it and he goes up regularly on his day off to check on
13 that and to see Mr. Olmstead. That's what he was doing
14 there. And Carol Pino and the people in that house knew
15 that because he would regularly go up there on his day
16 off and check on things. So they know he would be
17 there.

18 So he was detained on the side of the road.
19 There's no question then that the police learned that
20 Mackenzie was making allegations that something had
21 happened, so they arrested him. That's enough evidence
22 to arrest somebody on. But it's not enough evidence to
23 convict somebody on.

24 So, you'll hear Detective Albright testify.
25 He's a Vermont state trooper. He was initially called

1 on the case because he was supposed to go to the
2 hospital because anytime there's an allegation of sexual
3 abuse or sexual assault, no matter how old the person
4 is, the person is generally taken to a hospital. Why?
5 Number one they want to see that the person is okay.
6 And number two, they want to collect evidence. And
7 number three, that evidence would include some sort of
8 statement, and that evidence would also include a test
9 kit to see if there was any physical evidence because
10 that's an important part of a case like this.

11 Detective Albright, however, once he learned
12 that the defendant had been arrested, went to the police
13 barracks because they brought the defendant there, and
14 the intent was to question him. So he and another
15 officer, trooper, pardon me, Trooper McCoy questioned
16 the defendant. That's all totally appropriate. That's
17 exactly what they're supposed to do.

18 So, the defendant, however, was arrested at
19 approximately, he was stopped at approximately 9:00, and
20 from 9:00 he was detained by the police and not free to
21 go, and then some point after that he was arrested and
22 then he was put in the barracks. He was put in a small
23 sterile cell with a stainless steel plate to sit on and
24 a steel toilet and nothing else, and he was left there
25 for several hours. He didn't get any food and he didn't

1 get any water, and he knew that there was some
2 allegation that was really, really serious, and he was
3 told by one of the officers, you know, if this, we're
4 going to try to put you in jail for life, all right. So
5 he's scared. He doesn't know what to do.

6 So the police officers, Mr. Albright,
7 troopers, excuse me, Mr. Albright and Mr. McCoy come to
8 the cell and they bring him into an interview room and
9 then there's Miranda rights. You know, Miranda rights,
10 you have a right to remain silent. You have a right to
11 talk to a lawyer. You have a right to talk to a lawyer
12 and if you want to have a lawyer present when we
13 question you, you'll have that right. We cannot
14 question you without a lawyer present, all right?

15 So, he agreed to talk to them without a
16 lawyer. He didn't ask for a lawyer. And so what did he
17 tell him? He told them what he had done that day. And
18 they asked him in great detail what he had done that day
19 and he told them. All right? Now, they had already
20 gotten some information because they had been briefed on
21 their information that they'd received on the case.
22 They hadn't done any investigation, Mr. Albright and Mr.
23 McCoy, they're just going by this very brief briefing.

24 So, what they're trying to do is question the
25 defendant. And you'll hear them, when they didn't get

1 the information that they had, they became more
2 aggressive, and that's totally appropriate. That's what
3 they're supposed to do. They don't treat everyone with
4 kid gloves. They didn't physically coerce him, but they
5 weren't happy with what he said because as they told
6 him, your story does not lineup with the other
7 information that we have. Your information is not
8 lining up with the other information that we have.

9 So they became more aggressive. And so, you
10 know, he had been in the cell for hours. He hadn't
11 asked for a lawyer. He was very nervous. He was
12 starting to get scared because this is a real serious
13 thing, so he says, well, wait a minute, before I talk to
14 you anymore I want to talk to a lawyer, and then if he
15 does that the police have to stop questioning him, and
16 they honored that. They did exactly what they were
17 supposed to do. They stopped questioning him.

18 And then he went back to this cell with the
19 steel bed and the steel toilet and nothing else, bars,
20 and he sat there for what seemed like forever for him,
21 it was an hour, maybe a little less than an hour, all
22 right, and he's requested a lawyer. He thought he was
23 going to get a phone call to his lawyer. And he had a
24 lawyer. And so he's waiting in the cell. He never gets
25 to call his lawyer.

1 So he signals that he wants to talk to the
2 troopers again, all right, and then -- so the troopers
3 think he wants to reinstitute the questioning, okay. So
4 they bring him into the cell a second time and they
5 think, well, okay, you want to talk to us again and he
6 says yeah, I was supposed to get a phone call to my
7 lawyer, and then they said do you want to talk to us
8 again or do you want a lawyer? He said, well, both. I
9 want to talk to my lawyer so that he can be here when I
10 talk to you, and they said, which is correct, look, we
11 don't have to talk to you. If you call a lawyer, we're
12 not going to talk to you. However, if you want to talk
13 to us without a lawyer, then we'll talk to you. So he's
14 confused about that because that's a little inconsistent
15 with what Miranda says.

16 But the officers didn't do anything wrong.
17 They started questioning him again. So he agreed -- he
18 finally after some hesitation said, okay, I'll talk to
19 you. He is concerned because they tell him this girl is
20 missing, he wants to talk to them, but he's nervous and
21 he's scared and he wants his lawyer, but he can't do
22 both. So he says, okay, I'll talk to you.

23 So, what does he do? He starts telling them
24 the same thing he told them in the first place, you
25 know, what he did, that he rode around at night which he

1 quite often does after work, and they're believing that.

2 So they pressure him again, which is perfectly
3 legal. The problem is that sometimes when this
4 situation arises they don't get accurate information
5 because people are emotional beings, and when they are
6 put in a situation like that that is stressful,
7 sometimes they say things. There's a thing called false
8 confessions that happens for various reasons. That's
9 what happened in this case.

10 So, how do we know that? Well, they started
11 telling him about what the facts were according to them,
12 what their information was, and they told him some stuff
13 that wasn't true. They told him that he had been seen
14 by a completely independent non-biased person in the
15 woods with Mackenzie by the hotel, all right. Now, that
16 wasn't true. What happened is a witness claims that he
17 saw Mackenzie and a person in the woods, but they
18 couldn't tell who it was. So they told my client two,
19 three times this independent person saw you in the
20 woods. They saw you in the woods. We have all this
21 evidence against you. They make it a huge effort to
22 tell him exactly what their information is, so he knows
23 what they want because they told him what they want.

24 So, at one point they told him, you know, just
25 to be clear, we got Hinsdale police pulling videos from

1 the house, because there was video cameras in the house
2 where he supposedly had sex with Mackenzie. They said
3 we got her phone. We're doing a warrant on your car.
4 They're going to search his car for evidence. We're
5 doing a warrant on the abandoned hotel that the sister
6 owns to see if they can find evidence that he was there.
7 And they tell him that's where Mackenzie says you had
8 sex with her. She says you took her from the house in
9 Hinsdale, not forcibly, but drove her to Vermont and
10 stayed at the hotel and you had sex with her. I don't
11 know why anyone would tell us all that. And then they
12 mentioned that he had told them that he had been driving
13 around and he was at a Jiffy Mart and at a Sunoco, so
14 they tell him the Jiffy Mart video and the Sunoco video,
15 I mean all that stuff, I hope it's there for your sake
16 and I hope you're alone for your sake. But I got a
17 pretty good feeling you're not alone. And that's, I
18 mean, that's about all I can tell you. And I would
19 guess, they're doing a sex assault kit on Mackenzie, I
20 would guess they're going to find your DNA. All right?

21 So he finally says just to stop it, he tells
22 them what they want to know. How does he know what to
23 tell them? They told him what to say. That's how they
24 know. And he says, okay, yeah, I brought her up here
25 and had sex with her.

1 But in reality there's no Jiffy Mart video.
2 There's no Sunoco video. There's no videos from 76 Glen
3 Street or any other place. You'll hear testimony --
4 well, actually, you know, I told you about the police
5 saying they were going to bring her to the hospital to
6 have a test kit to see if there was DNA, I want you to
7 remember that and then I want you to listen to the
8 government's case and see if there's any evidence of
9 that.

10 There wasn't any person that ID'd Kurt was the
11 person in the woods with Mackenzie. There's no physical
12 evidence that Mackenzie was in the car. They took the
13 car apart, tested it, cut pieces off the seat, searched
14 for everything. There was no evidence that Mackenzie
15 was in the car. None.

16 There was no evidence that Kurt was in the
17 motel. And they searched for evidence. They have a
18 special team, I think there was two or three people
19 searching for evidence. There's no evidence of that.

20 You'll hear testimony about tire tracks.
21 There was tire tracks in the mud. You'll hear an
22 officer testify about how muddy it was and he had to get
23 out of the car. They had Kurt's car. Any evidence
24 there was mud on the car? Any evidence there was mud on
25 the tires? There was tire tracks. Did they check to

1 see if the tire tracks were Kurt's tire tracks? No,
2 they didn't.

3 So, in the end I would submit to you that --
4 the judge told you wait to decide what happened until
5 you hear all the evidence. That's obviously very, very,
6 very important. But, you know, consider what the
7 evidence is and consider what their burden is and
8 consider what the evidence isn't, and we would submit to
9 you that there's not going to be enough evidence for
10 them to prove that my client committed this offense
11 beyond a reasonable doubt because he didn't do it.

12 THE COURT: All right, thank you. You can
13 call your first witness.

14 MS. KONESKY: Thank you, your Honor.
15 Government calls Patrick Elmore.

16 THE CLERK: Step around here and raise your
17 right hand.

18 PATRICK ELMORE

19 having been duly sworn, testified as follows:

20 THE CLERK: Would you please state your name
21 and spell your last name for the record.

22 THE WITNESS: Patrick Elmore. E-L-M-O-R-E.

23 THE CLERK: Thank you. You may be seated.

24 DIRECT EXAMINATION

25 BY MS. KONESKY:

1 Q. Good morning, Mr. Elmore.

2 A. Good morning.

3 Q. Mr. Elmore, where do you live?

4 A. In Bellows Falls, Vermont.

5 Q. Are you currently employed?

6 A. Yes, I am.

7 Q. Where are you employed?

8 A. Red Thread.

9 Q. And could you tell me a little bit about what
10 you do there?

11 A. It's an office furniture company. We sell
12 steel case and I'm one of the lead installers and I go
13 on jobs and run the jobs and install the furniture.

14 Q. Are you married?

15 A. I am.

16 Q. Do you have children?

17 A. I do.

18 Q. How old are your children?

19 A. I have a son that's 22 and we're currently in
20 the process adopting a little girl who is seven months.

21 Q. Mr. Elmore, do you know Mackenzie Harvey?

22 A. I do.

23 Q. How do you know Mackenzie Harvey?

24 A. Through a youth group.

25 Q. And tell me about the youth group, what is

1 that?

2 A. The youth group is a Christian-based program,
3 we hold it once a week, and it bring the kids in. We
4 play games and have some fun and then in the end we do a
5 lesson to give a basic Christian knowledge.

6 Q. Do you run the youth group?

7 A. We did then, yes.

8 Q. And did Mackenzie attend the youth group?

9 A. Yes, she did.

10 Q. Approximately how long did you know Mackenzie?

11 A. It's been just a little over two years now.

12 Q. And do you know her well?

13 A. Fairly well, yes.

14 Q. Could you describe your impressions of
15 Mackenzie?

16 A. Mackenzie is a big-hearted girl. She didn't
17 have the greatest home life and she has a hearing
18 disability, so she's been picked on a lot and beat on a
19 lot, so her self-esteem is pretty low when we got to
20 know her. She immediately latched on to my wife Kim and
21 myself to the point where, you know, she'd call Kim
22 almost every day and Kim kind of had to tell her, okay,
23 you've got to wait, you can't call every ten minutes.
24 So she was starving for attention.

25 Q. And in April 27th of 2017 do you know how old

1 Mackenzie was?

2 A. She was 14.

3 Q. Let's discuss that date, April 27, 2017. Did
4 you become aware of something that happened involving
5 Mackenzie Harvey that day?

6 A. I did.

7 Q. And how did you become aware of that?

8 A. I was sleeping. My wife woke me up.
9 Throughout the night, I think it was around 4:30,
10 Mackenzie's mother Carol had posted that her daughter
11 was gone.

12 MR. SAXE: Objection, it's hearsay your Honor.

13 MS. KONESKY: Your Honor, it's not for the
14 truth.

15 THE COURT: Well, I'll sustain the objection
16 and you can do what you want to do a different way I
17 think, so, why don't you try that.

18 MS. KONESKY: Okay.

19 Q. Can you tell me what you learned that caused
20 you to do what you later did that day?

21 A. Um --

22 MR. SAXE: Your Honor.

23 THE COURT: Well, no, he has to have personal
24 knowledge. I'm not sure why it's necessary that we
25 elicit this information. Just get on to the next thing.

1 What he did, not what caused him to do.

2 MS. KONESKY: Okay.

3 Q. Did you ultimately leave your house that
4 morning?

5 A. I did.

6 Q. And where did you go?

7 A. I went up to Alden Road in Rockingham,
8 Vermont.

9 Q. And why did you go there?

10 A. Because we had found out that Kurt had
11 property or his family had property there and we had
12 found out there were tracks near the old motel --

13 MR. SAXE: Objection, hearsay, your Honor.

14 THE COURT: The we found out Kurt has property
15 there is acceptable, disregard what followed after that,
16 members of the jury. Go ahead.

17 Q. Mr. Elmore, what was your purpose in traveling
18 to that location?

19 A. To search the property to see if Kurt and
20 Mackenzie were there.

21 Q. Okay. And why were you searching for
22 Mackenzie?

23 A. Because she was missing.

24 Q. And about how far do you live from that
25 property in Vermont?

1 A. It's about 15 minutes.

2 Q. Okay. And about what time did you arrive at
3 that property?

4 A. If I remember right, it was around 7:00.

5 Q. And what exactly is on that property in
6 Vermont?

7 A. There's an old abandoned motel.

8 Q. I'm going to show you what's been admitted as
9 Government's Exhibit 2. Do you recognize that?

10 A. I do.

11 Q. What is that?

12 A. That's the old motel.

13 Q. And this is on the property in Rockingham,
14 Vermont?

15 A. Correct.

16 Q. And when arrived on that property what's the
17 first thing that you did?

18 A. My first thing I did I observed the roadway
19 and it had rained the night before and there was a fresh
20 set of tracks, car tracks on the driveway.

21 Q. Okay. And what did you do observing the car
22 tracks?

23 A. After I observed it I drove down the motel,
24 because I was previously informed that if you go
25 straight from the motel all the way to the back, there's

1 a spot in the back where a car could park that couldn't
2 see it from the road. So I drove all the way down past
3 the motel, turned into that spot.

4 Q. Did you see a car there?

5 A. There was nothing there at the time.

6 Q. Did you notice anything else while you were
7 there?

8 A. At that time I didn't, so I started backing my
9 van up. And as I backed up, kind of like what a
10 three-point turn would be, as I was in the curve I
11 looked towards the woods and then I noticed the two
12 people.

13 Q. Okay. Could you describe what you were able
14 to make out of the two people in the woods?

15 A. The two people in the woods, one that had the
16 pink camo jacket, the other one was a tall person,
17 taller person, looked like a male, and I believe they
18 both had backpacks.

19 Q. And that person with the pink camo jacket,
20 were able to determine whether that was male or a
21 female?

22 A. It would have been a female. She had long
23 hair.

24 Q. What did you do when you observed them?

25 A. So when I observed them they kind of ducked,

1 saw me, we kind of saw each other at the same time and
2 they ran straight forward. So, I was still in my van,
3 so I figured I'd go back out to the main road to try to
4 cut them off. So I went back out and took a left
5 towards the overpass, and right in front of the overpass
6 there's like a little pull-off, and I pulled my van in
7 there and I got out, walked across the road. As I was
8 walking across the road, I saw Mackenzie.

9 Q. Okay. And were you able to make out that this
10 was Mackenzie?

11 A. Yes. At that point she was close enough I
12 could see her face and recognized Mackenzie.

13 Q. Was anyone with her?

14 A. No, at that point, no.

15 MS. KONESKY: Could you please pull up
16 Exhibit 1.

17 Q. Now Mr. Elmore, do you recognize what's
18 depicted in this picture?

19 A. Yes, I do.

20 Q. And could you just -- what does this depict a
21 picture of?

22 A. This is a picture of the motel.

23 Q. Okay. Could you point out the motel on that?

24 A. It's right here.

25 Q. Yeah, if you write on the screen it should

1 show up.

2 A. Go like this? Okay.

3 Q. And could you point out on that map where sort
4 of the road is in relation to that when you arrived at
5 the motel?

6 A. Which road are you looking for, like the Alden
7 Road or Missing Link Road or the road in front of the
8 motel?

9 Q. It might be helpful if you could show the jury
10 both roads just to get a sense of where things are.

11 A. Okay. So, this is Missing Link Road or Route
12 5, and you would take a left up on Alden Road, and it's
13 hard to see but right here is the driveway that comes
14 from Alden Road back to the motel, and back in this area
15 is where I was told you could park the car.

16 Q. Okay. And could you show us where
17 approximately you observed the two people in the woods?

18 A. It would have been right about in this area.

19 Q. Okay. And where did you observe Mackenzie by
20 herself?

21 A. So when I pulled back out, I came out Alden
22 Road and I came up here, there's a little pull-off right
23 here, and I saw Mackenzie right about in there.

24 Q. Okay. And about how much time passed between
25 when you saw the two people and when you saw Mackenzie?

1 A. Just a few minutes at most.

2 Q. Okay. And it's a bit hard to tell from the
3 side here, but could you estimate what distance is
4 between those two locations?

5 A. When I saw them?

6 Q. Between the two locations where you saw the
7 two people?

8 A. Probably a couple hundred feet.

9 Q. Okay. If you could walk in, how long do think
10 you would walk?

11 A. Not very long.

12 Q. And when you saw the person you were able to
13 identify as Mackenzie, what was she wearing?

14 A. She was wearing a pink camouflaged jacket.

15 Q. Were you able to determine that was the same
16 as the jacket you observed earlier?

17 A. Yes.

18 Q. Now, when you saw Mackenzie by the woods, what
19 did you do?

20 A. So, again, I was walking across the road and I
21 spotted her and I yelled out her name, and she turned
22 around and ran. So, again, back in here there's a nice
23 swamp area, it was springtime, so all the flowers were
24 coming, so by the time I got through that to the dry
25 patch of land I had lost sight of Mackenzie.

1 Q. And what did you do after that?

2 A. After that I continued down into the woods,
3 down this way searching for her.

4 Q. At some point did other people arrive?

5 A. As I was searching I got to the point where I
6 was kind of near the hotel and I could see it, so I
7 looped back to the hotel, and I decided to search in the
8 hotel just to make sure, and I went through all the
9 individual rooms to see if I could see anybody. When I
10 got done with that I continued back down the driveway to
11 Alden Road. When I got close to the end of Alden Road,
12 Mackenzie's mother Carol and two of her relatives showed
13 up.

14 Q. Okay. And let's go back to when you walked
15 through the motel. I'm going to show you what's been
16 admitted as Government's Exhibit No. 4.

17 Do you recognize this?

18 A. Yes.

19 Q. What is this a picture of?

20 A. A picture of the inside of the hotel, one of
21 the rooms.

22 Q. Okay. That's how it looked like on the day
23 you were there?

24 A. Yes.

25 Q. Let me show you Exhibit 5. Could you describe

1 this picture?

2 A. It's another picture of the inside.

3 Q. And Government's Exhibit 6?

4 A. Again, another picture of the inside of the
5 motel.

6 Q. Do these pictures fairly depict the condition
7 of the entire motel?

8 A. Yes, it's pretty ragged and falling down and
9 been vandalized quite a bit.

10 Q. And you just testified that after you went
11 through the motel you met some other people who had
12 arrived?

13 A. Yes.

14 Q. Did another -- did another person arrive
15 shortly after that?

16 A. Not for a while. So, when we met, when I met
17 Carol's mother and the two relatives, we broke apart.
18 We started searching back in the woods. A little while
19 later I was with one of the relatives, I lost sight of
20 Carol and the other relative, so we decided to go loop
21 around and find them. On our way back one of the state
22 police had arrived because prior to that when I first
23 saw them my wife had called the police to tell them that
24 I had saw them up there and that they needed to go up.

25 Q. Okay. And did you continue your search for

1 some time after that?

2 A. When the state police officer showed up he
3 started asking, you know, the basic questions, names and
4 stuff like that, trying to get his bearings. I had
5 broken off to go search some more and he had caught up
6 to us and he asked us not to be in the woods anymore
7 because we were more of a hazard than a help at that
8 point and to come back out. He had, you know, suggested
9 that one of us post like a car down by the corner of
10 Missing Link which is Route 5, and Alden Road, to see if
11 we can see the car, and then one of us go like the other
12 side and see if we could see it that way, make sure
13 nobody drove past us.

14 Q. And did you do that?

15 A. We did.

16 Q. Okay. And at some point did the search end?

17 A. It did. One of Carol's family members went
18 down Missing Link and Alden and started there and I went
19 the other way. I went quite a bit of distance and it
20 just turns into really bad dirt roads, so I turned
21 around and I came back. As I was coming back to the
22 original motel site, Carol, Mackenzie's mother, told me
23 that their relative --

24 MR. SAXE: Objection, your Honor.

25 THE COURT: All right, stop just a minute.

1 Disregard his answer and ask another question. His
2 answer went beyond what you had asked, so just ask a
3 question, just try to answer the questions being asked,
4 sir.

5 THE WITNESS: Yes, sir.

6 Q. Mr. Elmore, how did the search for Mackenzie
7 ultimately end?

8 A. That one of the relatives had spotted Kurt's
9 car going by her and Kurt --

10 MR. SAXE: Objection, hearsay, your Honor.

11 THE COURT: Yeah, that's hearsay. You can't
12 get that out.

13 MS. KONESKY: I'm not trying to elicit that.

14 THE COURT: Well, then, I'll give you
15 permission to ask a more leading question because I'm
16 not sure.

17 Q. Okay. Mr. Elmore, did Mackenzie ultimately
18 come out of the woods in that location?

19 A. She did.

20 Q. And approximately how long was that after you
21 had originally arrived on the scene?

22 A. It was probably around an hour or hour and a
23 half.

24 Q. Okay. And did you observe Mackenzie after she
25 came out of the woods?

1 A. I did.

2 Q. And what was she wearing?

3 A. The pink camouflage jacket and a backpack.

4 MS. KONESKY: Could we pull up Exhibit 1 one
5 more time.

6 Q. Could you point out on that map approximately
7 where Mackenzie came out of the woods?

8 A. She came out somewhere around here, it might
9 have been a little further down the picture, but in that
10 general location.

11 MS. KONESKY: No further questions.

12 THE COURT: Thank you. Cross-examination.

13 MR. SAXE: Yes, thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. SAXE:

16 Q. Okay, so, were you there when Mackenzie came
17 out of the woods?

18 A. I don't remember -- I don't think I was there
19 exactly when she came out of the woods, but I was very
20 close and I can't remember if I saw her walking out of
21 the woods or when she was on the side of the road.

22 Q. Isn't it true that when she came out of the
23 woods Carol Pino asked her if she was raped? Do you
24 remember that?

25 A. I don't. I don't remember. It's possible.

1 Q. Okay, is there anything that might refresh
2 your recollection on that?

3 A. (No response.)

4 Q. Let me ask you this. After this happened were
5 you questioned by anybody from law enforcement that day?

6 A. That day I was.

7 Q. Okay, it was Detective Albright; correct?

8 A. I don't remember his name.

9 Q. Okay, but you were questioned in the trooper
10 barracks?

11 A. Yes.

12 Q. And so everything was kind of fresh in your
13 mind at that point; right?

14 A. Yes.

15 Q. And so obviously you tried to tell them as
16 truthful as possible everything that happened, right?

17 A. Yes.

18 Q. So, if I showed you a copy of that report that
19 you wrote, would that maybe refresh your recollection?

20 A. Yes.

21 Q. Okay.

22 MR. SAXE: This is for ID, your Honor.

23 THE COURT: Counsel, as you know since you
24 were making hearsay objections, just make sure that the
25 witness has personal knowledge about anything that

1 you're asking about.

2 MR. SAXE: That's why I'm trying to do that
3 this way, your Honor, okay, so. Okay, so, can you
4 scroll that down a little, please. So it's up a little.
5 Up a little more. Up a little more. Up a little more.
6 Up a little more. Okay.

7 Q. Okay. So, I want you -- can you see that,
8 sir?

9 A. Yes.

10 Q. Okay. So, there's the end of that first
11 paragraph. Would you just read that to yourself and not
12 say anything about that. That's the last couple
13 sentences.

14 A. Okay.

15 Q. Okay. So does that refresh your recollection
16 as to whether you were present when she came out of the
17 woods?

18 A. I was -- the only thing I don't -- I was there
19 when she was on the side of the road, but I can't
20 specifically tell you where I was when she actually came
21 out of the actual woods. I know I was very close by. I
22 know I saw her walking and I know she was with her mom
23 and relatives.

24 Q. Did you actually see the interaction between
25 Carol Pino and Mackenzie?

1 A. Yes, I did.

2 Q. Okay. So, what you described back then during
3 the interview, was that correct?

4 A. I believe it was, yes.

5 Q. Okay. So, what did you observe Mackenzie say
6 -- did her mother ask her if she was raped?

7 A. Yes.

8 Q. What was her response?

9 A. That she didn't know what that meant.

10 Q. Okay. Okay, you can take that down.
11 Okay, so, you talked about going to the
12 abandoned motel; right?

13 A. Yes.

14 Q. And you saw fresh tire tracks; right?

15 A. Yes.

16 Q. And was there only one set of tracks?

17 A. I know I saw the tracks, but there must have
18 been two sets because there was no car there, so if one
19 went in, one would have to come out.

20 Q. Okay, but what you observed was you saw one
21 set of cars -- one set of tire tracks?

22 A. I saw tire tracks, yes.

23 Q. Okay.

24 MR. SAXE: Could you pull up Exhibit O-1.

25 Q. This is the same thing as you just saw, okay,

1 that's a full exhibit. Can you see that, sir?

2 A. Yes.

3 Q. Okay. Could you just point to that hotel that
4 you were talking about on direct?

5 A. It would be --

6 Q. Okay. So that's the hotel. So, you drove
7 your car all the way past that little red dot that you
8 put on there?

9 A. Yes.

10 Q. And you went around all the way to the end of
11 the building?

12 A. Yes, it would be the side end, yes.

13 Q. Okay. And that's because you wanted to see if
14 anyone was there?

15 A. Correct.

16 Q. You wanted to see if a car was there; right?

17 A. Correct.

18 Q. All right. You didn't see any car, did you?

19 A. No.

20 Q. And so you looked -- and you were specifically
21 looking for one; right?

22 A. Correct.

23 Q. And you understood there might be a place in
24 back of that motel where there could be a car hidden;
25 right?

1 A. Correct.

2 Q. And you didn't see a car.

3 A. Correct.

4 Q. All right. So, did you go -- and that's when
5 you backed out?

6 A. That's when I started backing out, correct.

7 Q. That's when you saw two people in the woods?

8 A. Correct.

9 Q. And there was a guy, you could tell it was a
10 guy; right?

11 A. Correct.

12 Q. At that point did you recognize Mackenzie or
13 was it just you could tell it was a girl?

14 A. I could tell it was a girl and a guy. I
15 didn't see the faces, they were a little too far way,
16 and it was kind of a quick glance.

17 Q. So you obviously can't say that you saw Mr.
18 Carpentino there because you couldn't tell who it was;
19 right?

20 A. Correct.

21 Q. All right. Did you tell law enforcement that?

22 A. I believe I did.

23 Q. Okay. All right, so when you saw them you
24 said you parked your car and started looking; right?

25 A. Correct. I drove back out of the hotel and

1 parked on Alden Road.

2 Q. And then eventually you said a couple minutes
3 later you saw the girl -- well, you saw a girl. And
4 this girl, whether or not it was the same as the last
5 girl, was Mackenzie; right?

6 A. Well, I saw -- as I parked my van I got out of
7 the van and just walked across the road and I saw her in
8 the woods.

9 Q. And so you knew it was her because you
10 recognized her?

11 A. Yes, at that point I could see her clearly.

12 Q. Okay. And she ran away from you?

13 A. Yes.

14 Q. And then you tried to locate her, but you
15 could not locate her?

16 A. Correct.

17 Q. All right. And then you testified that at
18 some point a trooper arrived and he told everyone to get
19 out of the woods, you're messing stuff up; right?

20 A. Correct.

21 Q. All right. So, then you went north on Route 5
22 and Carol Pino went south on Route 5 to look?

23 A. No, it would have been west, I went west on
24 Alden Road.

25 Q. Okay, so let's -- I'm confusing and I

1 apologize. So, could you take a look at that exhibit
2 again and you'll see it says Alden Road; right?

3 A. Correct.

4 Q. So the direction that you drove in --

5 A. The direction I drove was this way towards and
6 underneath 91 and up that way.

7 Q. Okay, so you're on Alden Road?

8 A. Correct.

9 Q. All right. So what happened then?

10 A. As far as?

11 Q. How far did you go?

12 A. I went, the distance I couldn't tell you how
13 long, it's in the back roads, and I went to where
14 there's almost nothing and I was feeling unsafe with my
15 vehicle getting back, so I turned back around.

16 Q. So this was a pretty rough road, it wasn't
17 paved; right?

18 A. Correct, it's dirt.

19 Q. Muddy?

20 A. Yes.

21 Q. All right. Not the kind of place that looked
22 like there had been a lot of traffic on there?

23 A. No.

24 Q. Did you see any tire tracks on that road?

25 A. I wasn't looking for tire tracks at that time.

1 Q. You were more worried about the road, right?

2 A. Yeah.

3 Q. Okay, all right. So, why did you decide to
4 turn around and go back the other way?

5 A. I had gone as far as I could go and there was
6 no major crossroad that I could see that I could get to,
7 so I thought it was worthless going that way.

8 Q. Okay, so what did you do next?

9 A. So I turned back around to go back down
10 towards Missing Link Road which is Route 5 here.

11 Q. Okay. So did you get there or did you stop
12 somewhere on the way as you were going down Alden Road?

13 A. I stopped almost near the motel. Carol's
14 mother, they had stopped me.

15 Q. Okay. So I'm not going to ask you what
16 Carol's mother told you. And so when did the police
17 officer arrive in relation to that event of you running
18 into Carol again?

19 A. When did he arrive?

20 Q. Yes.

21 A. He arrived before that.

22 Q. I'm sorry, okay. So, when you ran into Carol
23 again, where was Carol if you could point to on that
24 map. Was it at the intersection of Missing Link and
25 Alden?

1 A. It was near the intersection of where the
2 hotel was with Alden.

3 Q. Okay, so a little above, just a slight bit
4 away from Missing Link Road?

5 A. Right.

6 THE COURT: Can I see counsel at sidebar.

7 AT SIDEBAR

8 THE COURT: I just wanted to let you know as
9 someone who's in a position like the jurors not knowing
10 the relevant facts, I find I'm completely confused about
11 the timeline because you examined the witness about
12 having encountered the trooper and being told to get out
13 of the woods and then you proceed --

14 MR. SAXE: I did confuse that.

15 THE COURT: And I don't know sequentially when
16 those things happened. It may not matter to you, but I
17 just wanted to alert you if it does matter to you that
18 you may want to try to clear that up.

19 MR. SAXE: It does.

20 THE COURT: Okay.

21 MR. SAXE: Thanks.

22 Q. Okay, just to clarify here because I think I
23 confused things by asking not very good questions.

24 So, when did you first arrive up in this area,
25 what time?

1 A. When everything first started, that's your
2 question?

3 Q. Yes, I'm going to go back, way back to when
4 you first got up there.

5 A. Somewhere around seven.

6 Q. In the morning?

7 A. Yes.

8 Q. On April 27th?

9 A. Yes.

10 Q. All right. Did you -- what time was it that
11 you went into the parking lot of the motel there where
12 you described the tire tracks?

13 A. I honestly have no idea. It mean, it wasn't
14 that long after that, but.

15 Q. And when you did that had anyone else arrived
16 yet?

17 A. When I first got to the motel?

18 Q. Okay, the first -- okay, so you arrived at
19 about seven or whatever, and then at some point you went
20 to the motel and you saw the tire tracks?

21 A. Correct.

22 Q. Was anyone else there at that point?

23 A. No.

24 Q. All right. And so then you talk about seeing
25 two people in the woods that you couldn't identify?

1 A. Correct.

2 Q. Was anyone else there then?

3 A. No.

4 Q. All right. After you saw the two people in
5 the woods, then you backed, you stopped the car and then
6 you went and looked to see if you could find who they
7 were; right?

8 A. Correct.

9 Q. And how long after that was it that you saw a
10 young girl that you recognized as Mackenzie?

11 A. It was less than a minute because as I said, I
12 parked on Alden Road and as soon as I got out I walked
13 across the road and I saw her.

14 Q. All right. Was anybody else there when that
15 happened?

16 A. No.

17 Q. All right. And how long after that -- who
18 arrived next on the scene?

19 A. Carol and two relatives.

20 Q. How long after that did Carol and the two
21 relatives arrive on the scene?

22 A. How long after what?

23 Q. How long after you spotted the person that you
24 recognized to be Mackenzie?

25 A. Fifteen, 20, 30 minutes.

1 Q. Okay. What did you do during that time?

2 A. I searched.

3 Q. And then where did you search?

4 A. In the back of the hotel, little strip of
5 woods between the hotel and the interstate.

6 Q. And so that search took about 15 minutes or
7 so?

8 A. Well, I went from there around the side and I
9 searched the inside of the motel and all the rooms, and
10 I went through each room.

11 Q. Okay. And you didn't find anything?

12 A. Correct.

13 Q. All right. So, then, after that period of
14 time how long after you finished the search did Carol
15 Pino arrive?

16 A. After I finished the search I was walking back
17 towards Alden Road and that's when she arrived.

18 Q. Okay. And where was she when you first saw
19 her?

20 A. She was just pulling into the driveway of the
21 hotel, motel.

22 Q. Could you point out where that is on there.
23 Is that already marked with red there?

24 A. Yeah, I can circle it, like right in there.

25 Q. Okay, good. All right. So then what did you

1 do after that, the very first thing that you did after
2 that?

3 A. The first thing when I saw them, I told them
4 that they were here and --

5 Q. You said they were here, but you actually
6 hadn't seen Kurt so you don't know whether he was there
7 or not; correct?

8 A. I didn't actually see him, but.

9 Q. You assumed he was there?

10 A. Yes.

11 Q. Okay. So, you told them that. What did you
12 all do at that point?

13 A. Then we started searching. We went back into
14 the woods behind the motel and searched along the strip
15 down like 91 and the hotel.

16 Q. Okay. You didn't see a car, did you?

17 A. No.

18 Q. All right. And then how long did you do that
19 for?

20 A. Ten, 15 minutes.

21 Q. And then at the end of that 10 or 15 minutes
22 what happened?

23 A. Then I looped back around to the hotel and
24 that's when we wound up meeting with the state police
25 officer.

1 Q. Okay. And then how long was that after all
2 you started searching together?

3 A. When I had met the police officer?

4 Q. When the police officer arrived?

5 A. It was like 10, 15 minutes.

6 Q. Okay. Do you remember who that officer was?

7 A. No, I do not.

8 Q. And then you talked to about him instructing
9 you stay out of the woods?

10 A. Correct.

11 Q. And then that's when you took your drive down
12 Alden Road?

13 A. Correct.

14 Q. Okay. And then how long did that drive last?

15 A. Just a few minutes. It wasn't that long.

16 Q. Five minutes, 10 minutes?

17 A. Five, 10 minutes at best.

18 Q. And then you turned around and you went back
19 down Alden Road towards Missing Link Road; right?

20 A. Yes.

21 Q. All right. And then what happened next?

22 A. Then Carol stopped me.

23 Q. Okay. And where was that on the map?

24 A. It was, there's a circle, but right about in
25 there.

1 Q. Okay. And you had a conversation with her?

2 A. A short one, yes.

3 Q. And after that conversation what did you do?

4 A. I was in my van. I told her to follow me
5 because the police had stopped the car in Springfield
6 and she wanted to be there.

7 Q. Okay, so -- okay, so prior to that time did
8 you ever -- so what kind of car was the car that Kurt
9 was supposed to be in?

10 A. A silver or gray car.

11 Q. Okay. Did you ever see a silver or gray car
12 in that area?

13 A. I did not see his car, that car.

14 Q. Okay. And you were looking for it; right?

15 A. Yes.

16 Q. All right.

17 MR. SAXE: Could I have a second, your Honor?

18 THE COURT: Yes.

19 (Pause.)

20 Q. BY MR. SAXE: So when you saw this individual
21 male in the woods in the rear view mirror --

22 A. It wasn't the rear view mirror.

23 Q. Oh, I mean, did you turn around and look or
24 what?

25 A. As I was turning, as you turn, you turn around

1 like this, and as I was about to pull up I looked this
2 way and I saw them.

3 Q. Okay. And you said -- did the person have a
4 backpack on?

5 A. I saw backpacks.

6 Q. Did he have a backpack on or did the girl have
7 a backpack?

8 A. I know she had the backpack.

9 Q. Did the male have a backpack?

10 A. I believe so but I can't be 100 percent
11 positive.

12 Q. I understand.

13 MR. SAXE: I don't have any further questions
14 your Honor.

15 THE COURT: Any redirect?

16 REDIRECT EXAMINATION

17 BY MS. KONESKY:

18 Q. Mr. Elmore, just one question. When you saw
19 Mackenzie after she had come out of the woods, how did
20 she appear?

21 A. She was pretty disheveled. She was cold and
22 shaken and very scared and she was crying.

23 MS. KONESKY: Okay, thank you. No further
24 questions.

25 THE COURT: Thank you, sir, you can step down.

1 It's a good time for our mid-morning break.
2 We'll break for approximately 15 minutes.

3 (Jury exited the courtroom.)

4 THE COURT: I want to discuss these notes with
5 the parties, but I want to ask anyone who is not
6 employed by the Court or one of the parties to please
7 leave while I, I'm going to seal the courtroom, and
8 after the break you can come back in. All right? So
9 anybody, interns can stay, people employed by the
10 parties can stay. Everybody else should leave.

11 (Public leaves the courtroom.)

12 (Sealed transcript under separate cover.)

13 THE COURT: I do want to raise one other issue
14 with this juror. Do you remember, when did this happen
15 to her?

16 MR. AFRAME: I think she had recently.

17 THE COURT: Yeah, but did she say how
18 recently? Between the time of jury selection and now?

19 MR. AFRAME: I didn't get that sense, but I'm
20 not sure.

21 THE COURT: Well, one of the things that
22 concerns me is one of the questions I asked all the
23 jurors during voir dire is have you had any connection
24 with a criminal case, either as a victim, a witness or a
25 defendant. I do not recall her speaking up at that

1 time, which is concerning to me if she in fact had a
2 criminal charge against her at the time and didn't say
3 anything about it. So I think I have to bring her back
4 in and ask about when this occurred. But if it occurred
5 before jury selection and she didn't disclose it, that's
6 concerning to me.

7 MR. AFRAME: And I do think she said that, as
8 I understood it, the charge was against the husband.
9 That would --

10 THE COURT: Well, let me look at the question
11 that I ask. I use a standard form here. Have you at
12 any time been involved in a criminal matter in any court
13 that concerned yourself or any member of your immediate
14 family either as a defendant, a witness or a victim.

15 MR. AFRAME: Okay.

16 THE COURT: If I find that a juror hasn't come
17 forward when I've instructed them to under those
18 circumstances, that is concerning to me.

19 MR. AFRAME: Okay.

20 THE COURT: And so I'm inclined to bring her
21 back in. Does anybody have any different view about the
22 matter?

23 MR. SAXE: No, your Honor.

24 THE COURT: Okay. Would you ask the juror to
25 come back in one more time.

1 MR. AFRAME: Judge, do you want the public out
2 of the courtroom.

3 THE COURT: No, this part is a public
4 proceeding. The references to the materials submitted
5 are under seal. I felt I could do it publically.

6 MR. AFRAME: Okay.

7 (Juror enters the courtroom.)

8 THE COURT: Sorry to bother you again, ma'am.

9 JUROR: That's okay.

10 THE COURT: And again, you've done nothing
11 wrong, you have nothing to be concerned about here,
12 okay?

13 When was it that your husband was charged with
14 assault?

15 JUROR: About three weeks ago when we
16 delivered our written -- the process is we have to
17 deliver an eviction notice. Once that eviction, I guess
18 it was four weeks ago, when that, when the time on the
19 eviction notice passes, then you contact the sheriff's
20 office and then they do the next step. So we did that
21 last -- on June 1st we did the second step. So it was a
22 month ago we served notice.

23 THE COURT: Okay. And one of the things that
24 I wanted to ask you about, and again, I'm not in any way
25 suggesting you acted inappropriately, but I do want to

1 know what your response is to this question.

2 So, during the jury selection process I asked
3 all of the jurors have you at any time been involved in
4 a criminal matter in any court that concerned yourself
5 or any member of your immediate family either as a
6 defendant, a witness or a victim. And I'm wondering why
7 you didn't come forward at that time.

8 JUROR: I, I guess I didn't think of it as a
9 -- she went to the police station. It didn't proceed
10 from there because they called us right away, asked us
11 some questions. It was not filed in court. She just
12 went to the police station.

13 THE COURT: So you're saying there never was a
14 criminal charge brought?

15 JUROR: Not an official charge.

16 THE COURT: She made a complaint.

17 JUROR: That's correct.

18 THE COURT: But you weren't charged with
19 assault?

20 JUROR: That's correct.

21 THE COURT: Okay. So your -- then your answer
22 was literally correct to me that neither you or your
23 husband have been involved in a criminal matter in any
24 court that concerned yourself or member of your
25 immediate family because the matter never got to court.

1 JUROR: That's correct. They called, they
2 spoke to us, it didn't proceed further than that.

3 THE COURT: Okay.

4 JUROR: I just felt, to be honest, I didn't
5 disclose that kind of a current situation only because
6 we're involved right now in the serving of eviction
7 papers.

8 THE COURT: But are you concerned that a
9 criminal charge may be brought against you?

10 JUROR: I don't think it's going to go to that
11 after the conversation with the police officer and my
12 husband, and I believe they reached back out to her, the
13 police officer she had spoken to, but it did not get
14 actually filed. It was just, she was angry and she went
15 to the police. It didn't proceed as an actual charge.

16 THE COURT: Okay. Thank you. Could you go
17 back into the jury deliberation room.

18 (Juror exits the courtroom.)

19 THE COURT: That satisfies my concern. Is
20 there anything else we need to do?

21 MR. SAXE: No, your Honor.

22 THE COURT: Okay. Thank you. You can bring
23 the jury back in.

24 BEFORE THE JURY

25 THE COURT: All right, call your next witness.

1 MR. AFRAME: Vermont State Trooper Michael
2 Sorensen.

3 MICHAEL SORENSEN

4 having been duly sworn, testified as follows:

5 THE CLERK: Thank you. Please state your name
6 and spell your last name for the record.

7 THE WITNESS: Sure. My name is Michael
8 Sorensen. That's S-O-R-E-N-S-E-N.

9 DIRECT EXAMINATION

10 BY MR. AFRAME:

11 Q. Good morning, Trooper Sorensen. Could you
12 begin just by explaining to the jury how you're
13 employed?

14 A. I'm a corporal with Vermont State Police and
15 I've been a trooper since January of 1990, so a little
16 over 28 years.

17 Q. And can you just describe very generally what
18 you do in your position as a Vermont State Police
19 corporal?

20 A. Presently I'm assigned to the traffic crash
21 reconstruction unit. So I investigate serious bodily
22 injury and fatal crashes. But on the date of this
23 incident I was the senior trooper in charge of the shift
24 at Westminster Barracks.

25 Q. Okay. And let me direct your attention right

1 to the morning of April 27, 2017. Did you get a call to
2 report somewhere that morning?

3 A. Yes.

4 Q. Where did you report?

5 A. I got called to the area of Alden Road and
6 Missing Link Road or U.S. Route 5 in the town of
7 Rockingham.

8 Q. I'd ask to bring up Government's Exhibit 1.
9 It will come up on the screen in a second.

10 Is it on the screen?

11 A. Yes.

12 Q. Okay. Is that the area to which you reported?

13 A. Yes, it is.

14 Q. And what was your reason for coming to that
15 location?

16 A. The dispatcher advised me that we were looking
17 for a missing 14-year-old girl.

18 Q. Okay. And when you arrived at that location,
19 tell me about what you found there?

20 A. I got met by Patrick Elmore, Carol Pino and I
21 believe two other females whose names I don't recall.

22 Q. And where were they?

23 A. I believe that they were in the area of Alden
24 Road just west of the interstate.

25 Q. And we have the feature here where you can

1 just show by putting a dot or an X on the picture.

2 THE COURT: If you touch the screen, it will

3 --

4 Q. Yes.

5 A. (Witness doing so.)

6 Q. Okay. When you encountered them after talking
7 to them, where did you ask them to go?

8 A. I asked a couple of them to maintain a
9 position on Alden Road, I believe west of the
10 interstate, and another pair to hang out in the area of
11 Alden Road and Missing Link Road or Route 5.

12 Q. Okay. Did you ask them to stay out of the
13 woods?

14 A. Yes.

15 Q. Why?

16 A. It's been my experience that putting untrained
17 personnel out into the woods tends to create more
18 problems for us and doesn't help us further our mission
19 in finding a missing person.

20 Q. Did you do any searching in the woods?

21 A. I took a walk to check out what was believed
22 to be an abandoned trailer, but I didn't find any
23 missing person there.

24 Q. Okay. What did you do next?

25 A. I patrolled around the roads in the area

1 because I was fairly certain based on past experience
2 that whoever we were looking for would pop out on the
3 roads again.

4 Q. Okay. Did you see anyone?

5 A. No.

6 Q. Okay. At some point did you see the people
7 that you had asked to stand out from the search party?

8 A. Yes.

9 Q. And without telling me what it was did you
10 receive any information from them?

11 A. Yes.

12 Q. And based on that information what did you do
13 next?

14 A. I began traveling at a high rate of speed
15 north on Route 5 towards Springfield.

16 Q. And just again by drawing or showing, showing
17 us on that map, what does that mean, which direction
18 were you going?

19 A. (Witness indicating.)

20 Q. Okay. And what were you looking for that you
21 were going at a high rate of speed?

22 A. A silver Dodge Neon.

23 Q. And you said you were going towards
24 Springfield. So, how does Springfield relate to
25 Rockingham, Vermont?

1 A. Springfield is the next town north of the town
2 of Rockingham. It's on the eastern side of the state.

3 Q. In addition to you yourself trying to find
4 this Dodge Neon, did you take any steps to get other
5 assistance from law enforcement?

6 A. Yes, I did.

7 Q. What did you do?

8 A. I requested that our dispatcher put out a
9 be-on-the-lookout or a BOL for this vehicle to the
10 officers in our area as well as the Springfield Police
11 Department.

12 Q. And while you were driving on Route 5 did you
13 receive any information about the location based on that
14 step you took, about the location of the Dodge Neon?

15 A. Not while I was driving on Route 5, but later
16 on, yes, I did receive some information.

17 Q. And just so the jury has a sense of time. So
18 from the time you left this area heading on Route 5 to
19 the point that the Dodge Neon was located, about how
20 much time went by?

21 A. I would say maybe 10 to 15 minutes.

22 Q. Okay. And did you find out where the Dodge
23 Neon was?

24 A. Yes.

25 Q. And where was it?

1 A. It was on Route 11 in the town of Springfield
2 near the, I think it's the Edgar May Recreation Center.

3 Q. Okay. And about how far from this area that
4 we're looking at here to the Edgar May Recreation
5 Center, how far is that?

6 A. It's about five miles as the crow flies.

7 Q. And did you report to that location?

8 A. I did.

9 Q. And when you reported to that location what
10 did you see there?

11 A. I saw the Springfield Police Department had
12 stopped the vehicle that we were looking for, the silver
13 Dodge Neon.

14 Q. And what did you do?

15 A. I gathered some information from the
16 Springfield officers, I spoke with Trooper Lunderville
17 who was on shift with me, and I spoke with Mr.
18 Carpentino.

19 Q. Okay. Now, was Mr. Carpentino alone other
20 than police?

21 A. Yes, there was nobody else in his vehicle.

22 Q. Okay. And was he outside of his vehicle?

23 A. Yes, he was.

24 Q. And did you engage in a discussion with him?

25 A. Yes, I did.

1 Q. And did you ask him about the nature of your
2 investigation?

3 A. Yes.

4 Q. And did you let him know that it was related
5 to a missing person named Mackenzie Harvey?

6 A. Yes.

7 Q. And did you ask him to provide an explanation
8 of where he had been and what he had been doing?

9 A. Yes, I did.

10 Q. Can you tell the jury what he told you at the
11 side of the road by the car?

12 A. He said that he had been driving around most
13 of the night and he had gone to this area of Rockingham
14 where his, I believe I think he said his sister or maybe
15 his family owned some property.

16 Q. And what else did he say he saw when he went
17 by that property?

18 A. He said that he saw his ex-girlfriend, who I
19 think he identified as Carol Pino, acting crazy. So he
20 sped off.

21 Q. And did he say what he meant by acting crazy?

22 A. I think she was waving her arms.

23 Q. Okay. And did he say anything else
24 significant about what he had been doing the night
25 before, the day before?

1 A. He just said that he had been driving around
2 all night. He went to check on this property that his
3 family owned. It was kind of in ruins. And he was
4 driving to his sister's house in --

5 Q. Sorry, what did he say about Ms. Mackenzie
6 Harvey?

7 A. That his last contact with her had been in
8 like four, between four and five the previous day in
9 Hinsdale, New Hampshire.

10 Q. Okay. And did you wait with Mr. Carpentino at
11 the side of the road?

12 A. Yes, the general area.

13 Q. And what were you waiting for?

14 A. I was waiting for Corporal Brian Turner to get
15 in the area to start searching for Mackenzie.

16 Q. And some time later that morning was Mackenzie
17 found?

18 A. Yes.

19 Q. And after she was found did you obtain some
20 additional information?

21 A. Yes, I did.

22 Q. And based on that information what did you do?

23 A. I took Mr. Carpentino into custody.

24 Q. And where did you take him?

25 A. I brought him to the Westminster Barracks.

1 Q. Were you responsible for processing him into
2 the Westminster Barracks?

3 A. Yes, I was.

4 Q. And after you processed him was he
5 interviewed?

6 A. Yes.

7 Q. Did you have responsibility for the interview?

8 A. No, sir.

9 Q. At some point did the interview, the first
10 round of interviews stop?

11 A. Yes.

12 Q. And once the interview stopped where did Mr.
13 Carpentino go?

14 A. I believe it was back to holding cell one at
15 the barracks.

16 Q. Okay. And roughly what time of day was this
17 by this point, roughly?

18 A. I think it was around 2 p.m.

19 Q. Okay. And did -- was one of your
20 responsibilities to monitor that cell?

21 A. Yes.

22 Q. And did Mr. Carpentino at some point do
23 anything that caught your attention?

24 A. Yes. I believe he waved to the camera.

25 Q. And did you, what did you do when he waved to

1 the camera?

2 A. I believe that I went in and asked him what he
3 wanted.

4 Q. And what did he tell you?

5 A. He wanted to know if the detectives were still
6 there.

7 Q. And what did you do after that?

8 A. I went and told detective Sergeant Albright
9 that Mr. Carpentino wanted to speak with him.

10 Q. And did you arrange for that to happen?

11 A. Yes.

12 MR. AFRAME: No further questions.

13 THE COURT: Cross-examination.

14 MR. SAXE: Thank you, your Honor.

15 CROSS-EXAMINATION

16 BY MR. SAXE:

17 Q. Okay. So, where -- when you first arrived
18 there you saw Carol Pino, somebody you learned was Carol
19 Pino?

20 A. Yes.

21 Q. Okay. Could you point out on there again
22 where that was?

23 A. The area that I recall speaking with her was
24 this area here.

25 Q. Okay. And that's on the other side of the

1 interstate?

2 A. Yes.

3 Q. Okay. All right. In reverse order here. So
4 you testified at some point you heard that Mr.
5 Carpentino had been stopped in Springfield; correct?

6 A. Correct.

7 Q. And then you went there?

8 A. Correct.

9 Q. And do you remember what time you arrived?

10 A. I believe it was either 9:09 a.m. or 9:11 a.m.

11 Q. Okay. All right. So then you said you
12 received some other information and then you took him
13 into custody; right?

14 A. Yes.

15 Q. Do you remember what time it was that you took
16 him into custody?

17 A. I believe in my report I said that it was 9:52
18 a.m., but when I reviewed my video I think the time of
19 my video recorder said 9:48.

20 Q. Okay, so --

21 A. There was a couple minutes discrepancy.

22 Q. All right. And so between 9:09 and 9:48 he
23 was there -- he wasn't technically in custody but he
24 wasn't free to leave; right?

25 A. Correct.

1 Q. All right. So, and then what time did you
2 arrive at the police station?

3 A. I don't remember, however long it took me to
4 drive from Springfield to the Westminster Barracks.

5 Q. Estimate, do you have an estimate?

6 A. Fifteen or 20 minutes.

7 Q. All right. Now, do you remember what time you
8 arrived there when you booked him in, do you keep track
9 of the time?

10 A. I would have radioed the dispatcher that I was
11 arriving at the barracks with a someone in custody.

12 Q. You indicated that you processed him; right?

13 A. I placed him in the, I think it was holding
14 cell one.

15 Q. Okay. And do you remember what time you
16 placed him in holding cell one?

17 A. Without looking at my report, I don't recall.

18 Q. Okay. Do you remember what time he was
19 initially removed from that cell in order to be
20 questioned for the first time by Detective Albright?

21 A. I don't recall.

22 Q. All right. In between the time he was placed
23 in the cell and the time he was removed to talk to Mr.
24 Albright, did he get any food, did you bring him any
25 food?

1 A. No.

2 Q. Any water?

3 A. There's a sink in the cell.

4 Q. Okay. Is there a cup in the cell?

5 A. I don't remember.

6 Q. All right. So, as part of your investigation,
7 like right where you marked that X --

8 A. Yes.

9 Q. -- right, did you search, did you go and look
10 to see if there was a travel trailer there?

11 A. Yes, I did.

12 Q. And is the travel trailer on the map?

13 A. I do not see it, but it would be kind of in
14 this area, I guess.

15 Q. Pretty close to the highway; right?

16 A. Yes.

17 Q. Okay. And so did you try to drive your
18 cruiser up that road?

19 A. Yes, I did.

20 Q. Were you able to do that?

21 A. Just for a few feet.

22 Q. And why was that?

23 A. At the time I had a Dodge Charger and it
24 really didn't have much ground clearance. It was kind
25 of a rough road.

1 Q. Was it muddy?

2 A. Yes.

3 Q. All right. How about the condition in your
4 first X where you said you saw Carol Pino for the first
5 time, what's the condition of that road?

6 A. I would call it a regular Vermont dirt road.

7 Q. Okay. You didn't put in your report that you
8 saw any footprints in the mud; right?

9 A. Correct.

10 Q. You didn't put in your report that you saw any
11 tire tracks in the mud; correct?

12 A. Correct.

13 Q. And when you got to the trailer did you go
14 inside the trailer?

15 A. Yes.

16 Q. Did you see any muddy footprints inside the
17 trailer?

18 A. No.

19 Q. Did you see a lighter and a cell phone cord
20 inside there?

21 A. I believe so. I believe that's what I
22 documented.

23 Q. Okay. So, you didn't take those into
24 evidence?

25 A. I did not.

1 Q. All right. So, typically in a case like this
2 is there then a unit of troopers that's appointed to
3 actually gather evidence, is that what's typically done?

4 A. Yes.

5 Q. And that unit would be advised of the nature
6 of the case so they would know what evidence to gather;
7 correct?

8 A. Correct.

9 Q. All right. But you were not part of that unit
10 in this case?

11 A. No, sir.

12 Q. Other than the cell phone, the lighter and the
13 cell phone cord, did you see anything else that caught
14 your attention in that trailer?

15 A. No.

16 Q. And there was no one in the trailer; right?

17 A. Correct.

18 Q. And when you arrived at the scene of the stop
19 in Springfield where Mr. Carpentino had been stopped,
20 you saw the car; right?

21 A. Yes.

22 Q. Okay. And you didn't put in your report that
23 you saw any mud on the car; right?

24 A. I don't recall.

25 Q. Did you see any mud on the car?

1 A. I don't recall seeing any mud on the car.

2 Q. That would include the tires; right?

3 A. I don't recall whether there was mud on the
4 car or not.

5 Q. Okay. And so when you arrived at the scene of
6 the stop, you had the opportunity to look inside the
7 car?

8 A. Yes.

9 Q. And did you find any evidence -- okay, strike
10 that. So, you knew what this case was about; right?

11 A. Yes.

12 Q. And so how long have you been a trooper?

13 A. At that time a little over 27 years.

14 Q. So you know that it's important to try to look
15 for evidence; right?

16 A. Yes.

17 Q. And you didn't see any evidence in the car
18 that would have suggested that a girl had been in the
19 car; right?

20 A. Trooper Lunderville came to my attention at
21 one point and said that he saw some fingerprints on the,
22 I think it was the passenger side window.

23 Q. Did anybody -- so you're an investigator,
24 right, so typically you would lift those prints, right,
25 if they were of interest?

1 A. I had the vehicle seized and brought back to
2 the barracks for the crime scene search team to do that.

3 Q. So the troopers were aware that there was
4 supposedly fingerprints on the passenger side of the
5 vehicle; right?

6 A. I believe so.

7 Q. But you didn't see a purse or anything like
8 that?

9 A. I just looked very quickly. My main focus was
10 with Mr. Carpentino.

11 Q. No personal items?

12 A. I don't remember seeing anything.

13 Q. Did you try to gather any hair samples or
14 other evidence at that point?

15 A. No.

16 Q. All right. So, back to the fingerprints. So,
17 whenever a suspect is arrested and they're booked, you
18 routinely take fingerprints; right?

19 A. Typically, yes.

20 Q. And the trunk of the vehicle was also
21 searched; right?

22 A. Not in my presence.

23 Q. Okay. So -- all right, okay. And then did
24 you return back to this general area which is referenced
25 in Government's Exhibit 1 at any point?

1 A. Yes. Later in the evening I did.

2 Q. Okay. So, where did you go when you returned
3 to that area?

4 A. I believe that I took a position just for
5 scene security in this area here.

6 Q. Oh, so you went right to the actual building;
7 right?

8 A. Yes.

9 Q. Okay. And at the time you took that position
10 were you aware whether or not Mackenzie had been found
11 at that point?

12 A. When I took this position it was probably
13 around 5 p.m.

14 Q. Oh.

15 A. It was well after we had already taken him
16 into custody, she had been found and interviewed.

17 Q. Okay. So the road where you had that first X
18 that you put on there, what's the name of that road?

19 A. Alden Road.

20 Q. Okay. And the other road that is to the
21 right, not the highway but the road to the right, what's
22 the name of that road again?

23 A. This one?

24 Q. That's correct.

25 A. That's Missing Link Road or U.S. Route 5.

1 Q. Now, are you familiar with that area?

2 A. Somewhat.

3 Q. All right. So, do you know where the address
4 of 626 Missing Link Road is?

5 A. I do not.

6 Q. Okay. Now, you indicated that you didn't
7 remember the exact times about when things happened as
8 far as when you met Mr. Carpentino and brought him back
9 to the station, right? Right now you don't really
10 remember that, fair to say?

11 A. No, I remember the time that I arrived and the
12 time that I took him into custody.

13 Q. Okay. So, when you bring him into the
14 station, though, you do some sort of a log that says
15 exactly what the times are?

16 A. No. I would have radioed to our dispatcher
17 saying that I was 10-7 the barracks with a 95 which is a
18 10 code for somebody who we have in custody.

19 Q. Okay. But isn't there a form that is done
20 where you say what the times were when the suspect is
21 checked into the jail? Isn't there a form?

22 A. There's a form that we fill out and we hang on
23 the door to the cell saying that, indicating when we
24 have checked on somebody who was in our custody.

25 Q. Okay. So, if you were to look at that form

1 would it refresh your recollection as to what time these
2 things happened?

3 A. Probably.

4 Q. Okay. This is for ID. So I'm just going to
5 show you a document which is not in evidence just to
6 refresh your recollection to see if this makes you
7 remember the exact times that everything happened, okay?

8 A. Okay.

9 MR. SAXE: Sorry, your Honor, we don't have
10 that on PDF.

11 THE COURT: All right, has it been marked yet?

12 MR. SAXE: It's not an exhibit. I'm just
13 using it to refresh his recollection.

14 THE COURT: All right, well, we'll mark it for
15 identification as the next defendant exhibit at the next
16 break.

17 MR. SAXE: Okay, so that would be T.

18 THE COURT: T for identification. You can
19 show it to him and ask him if that refreshes his
20 recollection as to whatever it is you want him to be
21 refreshed.

22 Q. Okay. Would you take a look at that and tell
23 me what that is?

24 A. It is a Vermont State Police detained persons
25 security log.

1 Q. Okay, and is that the log that you were
2 referring to?

3 A. I don't recall referring to this log. The log
4 that I was talking about is that the dispatcher would
5 enter what I told them into our radio log.

6 Q. What is that log?

7 A. This is the log that we hang on the door to
8 the cell to just show when we checked on a prisoner.

9 Q. Okay. So that would have the exact times that
10 things happen in the cell with the prisoner; right?

11 A. Yes.

12 Q. Okay. Can I see that a second?

13 A. Sure.

14 Q. Okay. So, and then whoever goes to the cell
15 would put their initials there?

16 A. Correct.

17 Q. All right. So, looking at this can you tell
18 what time he arrived in the cell?

19 THE COURT: Well, that more than refreshes.
20 Do you have any objection to this coming in?

21 MR. AFRAME: No.

22 THE COURT: Let's mark it as a full exhibit,
23 okay, so that way you can refer to it that way, all
24 right? It will be admitted as a full exhibit without
25 objection.

1 MR. SAXE: Okay.

2 (Defendant's Exhibit T admitted.)

3 Q. So you would agree that that shows he arrived
4 at 11:11?

5 A. No.

6 Q. What's that say?

7 A. It says he was checked at 11:11.

8 Q. Oh, all right. So what that means is he would
9 have arrived there before 11:11?

10 A. Correct.

11 Q. And do you remember exactly what time that was
12 or approximately again?

13 A. Again, I would have to refer to the radio log
14 which I don't have on me.

15 Q. And then he was sent out for the interview at
16 12:56, or taken out for the interview at 12:56; right?

17 A. Yes.

18 Q. And he returned from the interview at 13:49.
19 That would be 1:49?

20 A. Correct.

21 Q. All right. And then at 14:31, which would be
22 2:31; right?

23 A. 2:31 p.m., yes.

24 Q. That reflects a request to speak to the
25 detectives, correct?

1 A. Correct.

2 Q. And then 14:54, which is 2:54, he was brought
3 out of the room to be re-interviewed?

4 A. Yes.

5 Q. And then he was returned to the cell at 15:56?

6 A. Correct.

7 Q. Which is 3:56.

8 A. Correct.

9 Q. Okay. And you indicated that you had spoken
10 -- can I have a second, your Honor.

11 First of all, you indicate that you spoke to
12 the defendant at the side of the road; right?

13 A. Yes.

14 Q. And then you indicated that you wrote a
15 report; right?

16 A. Yes.

17 Q. And isn't it true that you told him that if
18 you found out that the truth was different from the
19 answer that he gave, you would work long and hard to
20 insure that he went to jail for as long as possible;
21 correct?

22 A. Correct.

23 MR. SAXE: Can I have a second, your Honor.

24 THE COURT: Yes.

25 (Pause.)

1 MR. SAXE: I don't have any further questions,
2 thank you.

3 THE COURT: Redirect?

4 MR. AFRAME: Two, two questions.

5 REDIRECT EXAMINATION

6 BY MR. AFRAME:

7 Q. First of all, on that last comment. So, you
8 said to him if he lied to you you would work to keep him
9 in jail for as long as possible, is that what you just
10 told Mr. Saxe?

11 A. Yes.

12 Q. What else did you tell him about that?

13 A. I also told him that on the flip side of the
14 coin if he was cooperative and assisted us in finding
15 Mackenzie, that I would work to show how he cooperated
16 to assist us.

17 Q. Now, at that time at the side of the road were
18 you doing a forensic examination at that point of the
19 car?

20 A. No.

21 Q. What was the situation at that point just so
22 we're clear on this?

23 A. At that point we were still looking to
24 identify where Mackenzie was. We did not know where she
25 was other than she had last been seen in the woods near

1 this property on Alden Road.

2 Q. And so other than what Mr. Carpentino told you
3 and that his car was within a short distance from that
4 location, did you really know anything else at that
5 point?

6 A. No.

7 Q. Okay. And so what step did you take to make
8 sure any evidence that was there was preserved?

9 A. I had the car seized when we took him into
10 custody and transported back to the barracks maintaining
11 evidence or evidentiary custody of the vehicle.

12 Q. Thank you.

13 MR. AFRAME: No further questions.

14 THE COURT: Thank you, trooper, you're all
15 set.

16 MR. SAXE: Just one question?

17 THE COURT: All right, quick.

18 RECROSS-EXAMINATION

19 BY MR. SAXE:

20 Q. Okay. So you didn't do the forensic
21 examination, but in your experience as a trooper at some
22 point somebody would have done a forensics examination;
23 correct?

24 A. Yes.

25 MR. SAXE: That's it.

1 THE COURT: Thank you, sir, you're all done.
2 Call your next witness.

3 MS. KONESKY: Detective Sergeant Eric
4 Albright.

5 THE CLERK: Raise your right hand.

6 ERIC ALBRIGHT

7 having been duly sworn, testified as follows:

8 THE CLERK: Thank you. Please state your name
9 and spell your last name for the record.

10 THE WITNESS: My name is Eric Albright. My
11 last name is spelled A-L-B-R-I-G-H-T.

12 DIRECT EXAMINATION

13 BY MS. KONESKY:

14 Q. Mr. Albright, would you please begin by
15 telling the jury where you're employed?

16 A. I'm employed by the Vermont State Police as a
17 full time law enforcement officer.

18 Q. And how many years have you been so employed?

19 A. It will be 24 years this August.

20 Q. And what are your primary duties as a Vermont
21 State Police detective?

22 A. I'm assigned to the criminal division as a
23 detective, so we investigate major crimes, major
24 felonies.

25 Q. I'm going to direct you to April 27th of 2017.

1 Did you participate in an investigation of Kurt
2 Carpentino?

3 A. I did.

4 Q. And how did you first become involved in that
5 investigation?

6 A. It was approximately 9, 9:30 that morning, one
7 of the other detectives in my unit had alerted me to the
8 fact that there was a subject believed to be involved in
9 a possible abduction and sexual assault of a minor
10 female from New Hampshire.

11 Q. And what was your first assignment with
12 respect to the investigation that day?

13 A. Initially I was assigned to go with another
14 detective in my unit to the hospital and interview
15 family members as well as the victim if possible.

16 Q. And did you end up doing that?

17 A. No. The victim was transported to a different
18 hospital actually in New Hampshire.

19 Q. And were you then given a different
20 assignment?

21 A. I returned to the barracks where I had been
22 originally, and yes, I was given a different assignment.

23 Q. What was the assignment you were given back at
24 the barracks?

25 A. That assignment was to interview Kurt

1 Carpentino.

2 Q. Okay. And do you recall at approximately what
3 time you interviewed Mr. Carpentino?

4 A. It was late that morning initially.

5 Q. Had you ever met Mr. Carpentino before?

6 A. No.

7 Q. Do you recognize Mr. Carpentino in the room
8 today?

9 A. I do.

10 Q. Could you please point him out and describe an
11 article of clothing?

12 A. He has no hair, seated at the defense table in
13 the middle between defense counsel.

14 MS. KONESKY: May the record reflect that the
15 witness has identified the defendant.

16 THE COURT: Yes.

17 Q. Detective Albright, could you tell the jury a
18 little bit about your procedure for conducting
19 interviews of people in custody?

20 A. When somebody's in custody we're required to
21 provide them their Miranda warnings or their rights to
22 not speak to us or to have counsel.

23 Q. And also do you document the interview
24 typically?

25 A. Yes, we do.

1 Q. And how do you do that?

2 A. Besides taking our own notes we would also
3 audio and video record whenever possible. If the
4 interview is taking place at the barracks it would be
5 video and audio recorded.

6 Q. Okay. And in this case was the interview of
7 Mr. Carpentino video and audio recorded?

8 A. It was.

9 Q. And did you use two separate devices to do
10 that?

11 A. I did. I always run a backup digital audio
12 recorder.

13 Q. And in this case did both devices capture the
14 interview?

15 A. Both of them captured it, the audio of the
16 interview.

17 Q. I'm going to show you what's marked for
18 identification only as Government's Exhibit 11g.

19 Do you recognize this?

20 A. Yes, ma'am.

21 Q. And what is depicted?

22 A. That's Mr. Carpentino in the interview room
23 where we interviewed him.

24 Q. And what is this taken from?

25 A. This is a still frame or photograph taken from

1 the video recording.

2 Q. Is it a fair and accurate representation of a
3 part of that interview?

4 A. Yes, it is.

5 MS. KONESKY: I would like to strike the ID
6 and admit Government's Exhibit 11g.

7 THE COURT: Any objection?

8 MR. SAXE: No, your Honor.

9 THE COURT: Without objection, may be admitted
10 as an exhibit.

11 (Government's Exhibit 11g admitted.)

12 MS. KONESKY: Display that to the jury,
13 please.

14 Q. On April 27, 2017, how many times did you
15 speak to Mr. Carpentino?

16 A. It was on two occasions.

17 Q. Okay. And let's talk about the first time.
18 You testified that part of your procedure is to review
19 the Miranda rights with someone. Did you do that with
20 Mr. Carpentino?

21 A. I did.

22 Q. And did he waive those rights?

23 A. He did.

24 Q. And did you then proceed to fingerprint him?

25 A. I did.

1 Q. Let's talk about the substance of that
2 interview. How did you begin the interview with Mr.
3 Carpentino?

4 A. Usually it's just some background information
5 about employment or just getting to know that person a
6 little bit in general.

7 Q. And what did Mr. Carpentino tell you about
8 employment?

9 A. He told me he worked for People's Linen in
10 Keene, New Hampshire.

11 Q. And did he tell you about where he resided?

12 A. He told me that he resided in Manchester, yes.

13 Q. And you testified that you were investigating
14 a possible abduction in this case. Did you question him
15 about that?

16 A. Eventually, yes.

17 Q. Did you question him about his relationship
18 with the victim?

19 A. Yes.

20 Q. And what did he say about that?

21 A. He said that he was a landlord renting a
22 property in Hinsdale, New Hampshire, to the victim and
23 the victim's mother.

24 Q. Did you question him about his whereabouts
25 during the time of the abduction?

1 A. Yes.

2 Q. And what did he tell you about that?

3 A. He had told us that he had been there at the
4 Hinsdale address where the victim lived the day before
5 the interview, late afternoon, for a short period of
6 time, approximately an hour, and done some painting and
7 then left for an appointment in Manchester.

8 Q. What did he tell you he did after that over
9 the evening?

10 A. He basically said that he had left Manchester
11 and drove around returning to Keene, Hinsdale, and
12 eventually early that morning into the town of
13 Rockingham, Vermont.

14 Q. Why did he tell you that he went to
15 Rockingham?

16 A. He said that he had gone to Rockingham to
17 check a piece of property that his sister owned for
18 potential squatters.

19 Q. And after he told you this what were your
20 impressions about his statement?

21 A. That he was leaving out a lot of parts to that
22 sequence of events and wasn't being completely truthful.

23 Q. And can you explain a little more why you
24 didn't think he was being truthful?

25 A. Yes. Basically that, you know, there was

1 large gaps in the timeline.

2 Q. Did you confront Mr. Carpentino about that?

3 A. I did.

4 Q. And what did he do?

5 A. He said that he wanted to speak to an
6 attorney.

7 Q. And what did you do when he told you that?

8 A. We stopped interviewing him.

9 Q. And where did Mr. Carpentino go after the
10 interview ended?

11 A. He was returned to the holding area or the
12 processing room where there's two holding cells and he
13 was returned to one of the cells.

14 Q. And you testified that you spoke with him
15 twice; correct?

16 A. Yes.

17 Q. And how did the second interview come to
18 occur?

19 A. Approximately 30 minutes later Corporal Mike
20 Sorensen alerted me to the fact that Mr. Carpentino had
21 gotten his attention and said that he wanted to speak to
22 the detectives again.

23 Q. What did you do?

24 A. There was probably 20 minutes had passed,
25 myself and Sergeant McCoy talked a little bit and then

1 we went and spoke to Mr. Carpentino in the cell briefly.

2 Q. And what was the substance of the conversation
3 in the cell?

4 A. I just flat out asked him if, that I had heard
5 that he wanted to speak to us again and was that true.
6 He confirmed it was. And we escorted him back down to
7 the interview room.

8 Q. Did you undertake the same procedure with
9 respect to the second interview?

10 A. Yes.

11 Q. Was it recorded?

12 A. It was recorded, yes.

13 Q. And did you review Mr. Carpentino's Miranda
14 rights with him?

15 A. I did.

16 Q. Did he waive those rights?

17 A. That's correct.

18 Q. And we're going to listen to the recordings
19 that have been admitted into evidence. Do you know if
20 transcripts have been prepared of those parts of the
21 recordings?

22 A. Yes.

23 Q. And have you reviewed the transcripts?

24 A. Yes, I have.

25 Q. And do they accurately reflect what's heard on

1 the recording?

2 A. Yes, they did do.

3 MS. KONESKY: I'd like to pass out the
4 transcripts to the jury. They are marked for ID, they
5 won't be introduced as exhibits.

6 THE COURT: Yes, just give me an estimate on
7 timing here. So, you're planning to play both
8 interviews in full?

9 MS. KONESKY: No. It's about 20 to
10 30 minutes.

11 THE COURT: Okay. You're only going to play
12 the second interview?

13 MS. KONESKY: Part of the second interview.

14 THE COURT: Part of the second interview.
15 Yeah, I'm trying to get my timing down for the lunch
16 break is what I'm working on. I can go to like, you
17 think you can finish it by 12:20?

18 MS. KONESKY: I believe it's a little bit
19 longer than 20 minutes, but we could --

20 THE COURT: I'm wondering whether it makes
21 sense to break now and do the interview right afterwards
22 or it makes sense to do the interview now and take a
23 later lunch. I can defer to your --

24 MS. KONESKY: We can break now.

25 MR. AFRAME: We'll have an early lunch.

1 THE COURT: Everybody okay with that?

2 MR. SAXE: No problem.

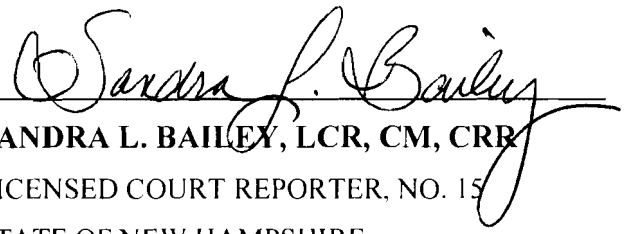
3 THE COURT: All right, so why don't we break
4 for lunch now and we'll come back at 1:15 and we'll hear
5 the tape, okay?

6 (Lunch recess taken at 12:00 p.m.)
7
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9
10
11

12 C E R T I F I C A T E
13

14 I, Sandra L. Bailey, do hereby certify that
15 the foregoing transcript is a true and accurate
16 transcription of the within proceedings, to the best of
17 my knowledge, skill, ability and belief.
18

19
20 Submitted: 11/13/2019


SANDRA L. BAILEY, LCR, CM, CRR
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